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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,	)	Supreme Court No. _____
	)	
Plaintiff-Respondent,	)	
	)	
vs	)	COURT REPORTER'S TRANSCRIPT
	)	
THOMAS EUGENE CREECH,	)	
	)	
Defendant-Appellant.	)	

BEFORE  
HONORABLE J. RAY DURTSCHL  
DISTRICT JUDGE

APPEAL from the District Court of the First  
Judicial District of the State of Idaho, in and for the  
County of Shoshone.

A P P E A R A N C E S

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4 WAYNE KIDWELL, Esq. Attorney General of the State of  
5 Idaho, Capitol Building, Boise, Idaho, for and on behalf of  
6 the plaintiff-respondent.

7 BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa,  
8 Idaho, appearing for and on behalf of the defendant-appellant.  
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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Cr. No. 2165

Plaintiff,

VS

REPORTER'S TRANSCRIPT

THOMAS EUGENE CREECH,

Defendant.

BEFORE

HONORABLE J. RAY DURTSHI

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and  
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,  
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Mampa, Idaho,  
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,  
appearing for and on behalf of the defendant.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,  
  
Plaintiff-Respondent,  
  
vs  
  
THOMAS EUGENE CREECH,  
  
Defendant-Appellant.

) Cr. No. 2165  
)  
)  
) LODGMENT OF COURT  
) REPORTER'S TRANSCRIPT  
) ON APPEAL  
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RECEIVED from John W. Gambee, Official Court Reporter  
of the above-entitled court, and lodged with me this \_\_\_\_ day  
of \_\_\_\_\_, 1976, original plus \_\_\_\_\_ copies of  
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

\_\_\_\_\_  
Deputy

1           WALLACE, IDAHO, TUESDAY, OCTOBER 7, 1975, 9:30 A.M.

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4           THE COURT: I have another doctor's certificate here  
5 indicating that Juror No. 26, Diane K. Dutton, is pregnant  
6 and estimated delivery time is this month, so he asked that  
7 she be excused, so we'll excuse number 26, Diane K. Dutton.

8           Mrs. Dumont, could you get that word to  
9 Mr. Farley in case he doesn't have it already; that we're going  
10 to excuse that juror.

11           Counsel ready to proceed?

12           MR. REMAKLUS: Yes, Your Honor.

13           MR. ROBINSON: Your Honor, I have one thing to put on  
14 the record.

15           This morning the Osburn radio station gave quite  
16 an extensive report of the proceedings here and did include  
17 an awful lot of the extraneous matters of out-of-state  
18 involvement.

19           THE COURT: All right, we'll start with Mrs. Bennett,  
20 if you could get her.

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WANDA L. BENNETT,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION  
BY THE COURT:

Q Mrs. Bennett, I'm going to ask you a few questions  
and then the attorneys will want to ask you a few. Everything  
we do here has to be reported by the Court Reporter, so if  
you will answer audibly, please, and not just nod your head.

A Yes.

Q I want to discuss first with you, just a little  
bit, about the length of the trial and the way the jurors will  
be handled during the trial and see if that creates a problem  
for you.

None of us know for sure how long this trial will  
last, but the best estimate we can make at this point is  
about three weeks.

After the jury is completely chosen and sworn to  
try the case and the trial actually starts, the jurors will  
be what we call sequestered; that means that you will have to  
be housed at a motel and won't be able to go home at night and  
they will eat at restaurants under the supervision of the  
Bailiffs.

I'm wondering if there's anything in your persona.

1 life, your home situation, your work or anything that would  
2 make this impossible for you to do, or create an extreme  
3 hardship. I note, before we start, that it will be inconvenient  
4 so that really isn't the question, it's whether there are  
5 real serious problems this would create for you?

6 A. No.

7 Q. Fine.

8 Turn to another matter, then. Under our law a  
9 defendant in a criminal action is presumed to be innocent  
10 until his guilt is established beyond a reasonable doubt by  
11 the State. The practical effect of this means that the  
12 defendant doesn't have to do anything to prove his innocence,  
13 it's completely up to the State to prove guilt beyond a  
14 reasonable doubt. The effect of this principle of law is that  
15 at this stage of the proceeding, before any evidence is  
16 presented, anything has been heard; that Mr. Creech must be  
17 considered innocent.

18 Are you able, at this time, to give him the  
19 full benefit of this principle and consider him to be innocent  
20 as he sits here today?

21 A. Yes, I believe I am.

22 Q. Have you read or heard anything about this case  
23 in the newspapers, radio, TV or any other source?

24 A. No. I heard this morning that it was the longest  
25 -- possibly the longest trial in the history, but I turned off

1 the radio.

2 Q You turned it off? You followed my admonition,  
3 they got that much out before you turned it off?

4 A Um-hmm.

5 Q I want to express my appreciation to you for  
6 following my admonition.

7 Had you read or heard anything about it in the  
8 past?

9 A Not that I remember.

10 Q You don't have any distinct recollection of  
11 having read anything about it?

12 A No.

13 Q From any information, any reason or for any  
14 cause, have you formed any opinion as to guilt or innocence  
15 of the defendant at this time; other than following the  
16 presumption I've stated to you?

17 A No.

18 Q Another principle of law I want to outline to  
19 you, Mrs. Bennett, under our law neither the jury nor the  
20 Judge has any discretion as to the penalty to be imposed for  
21 First Degree Murder. The legislature has fixed the death  
22 penalty as being mandatory and automatic for First Degree  
23 Murder.

24 So, on a First Degree Murder conviction, it  
25 doesn't leave any discretion to the jury or the Judge in

1 fixing the penalty. The legislature has already done that.

2 Knowing this to be the law, do you have any  
3 personal beliefs or feelings about the death penalty which  
4 would prevent you from fairly considering the evidence and  
5 the law bearing upon the charge of First Degree Murder?

6 A. I don't, really, believe so. I believe that I  
7 could -- knowing that the penalty is already fixed, that I  
8 could still judge, you know, whether I felt he was guilty or  
9 innocent.

10 Q. You could fairly consider a charge of First  
11 Degree Murder under the law and the evidence?

12 A. I believe so.

13 Q. Understanding that, it is the function of the  
14 jury to judge the facts and the Judge to give the law to the  
15 jury; do you know of any reason why you couldn't follow my  
16 instructions on the law?

17 A. No.

18 Q. In other words, if you found that some principle  
19 of law that's given to you is different than you thought the  
20 law was, maybe even didn't agree with it, would you still  
21 follow the instructions of the Court?

22 A. Yes.

23 Q. Do you now know of anything that I haven't asked  
24 you about that would prevent you from being a fair and  
25 impartial juror to both sides in this case?

1 A. No, sir.

2 THE COURT: Counsel may examine.

3

4

VOIR DIRE EXAMINATION

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BY MR. THOMAS:

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Q Mrs. Bennett, if you felt that the evidence in this case proved First Degree Murder beyond a reasonable doubt in your mind, could you honestly say that you could vote to convict the defendant; even though you realized that the death penalty was mandatory?

11

A. I believe so.

12

13

Q Do you have any particular reservations about the death penalty?

14

15

16

A. I do in a sense, but I still believe that I -- if I felt the defendant warranted so, that I would vote for guilty.

17

18

Q Could I ask you to tell us what kind of cases do you think the death penalty should be applicable in?

19

20

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THE COURT: I'm not going to permit that kind of a question to the witness; talking to a juror. That's, I think, infringing on the law and the Court's prerogative to tell the jury what the law is.

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Q BY MR. THOMAS: Do you feel you are able to follow the Court's instructions about what the law is with respect to reasonable doubt in such matters?

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A. Yes.

Q. And you are willing to do so?

A. Yes.

Q. Would you be willing and able to concentrate on whether the evidence shows guilt or innocence and not consider the penalty?

A. Yes, I believe so.

Q. You understand, do you not, that the jury is not responsible for the penalty in this case?

A. Yes.

Q. It's -- the question put to the jury is the question of guilt or innocence.

A. Yes.

Q. Do you feel, Mrs. Bennett, that you could give the State, as well as the defendant, a fair trial?

A. Yes.

Q. Do you watch any programs on television that dramatize courtroom procedures, trials; programs like Petrocelli and things of that kind?

A. Very seldom.

Q. But you have seen some?

A. (No audible response.)

Q. You realize, of course, that on those programs the procedures are dramatized somewhat and things of this trial may not work that way?

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A. Yes.

Q. That wouldn't influence your consideration of the evidence, would it?

A. No.

Q. Have you recently read any books or articles about lawyers or the law?

A. I've read a couple of articles on the Patty Hearst case, but --

MR. ROBINSON: I'm sorry, I couldn't hear the answer.

THE COURT: I think you'll have to speak up a little louder.

THE WITNESS: I've read a couple articles on the Patty Hearst case, but I think that's about the only newspaper articles I've read.

Q. BY MR. THOMAS: Were those articles relating to the facts of the case as they have developed at this point?

A. Yeah, it was a Time article from, you know, couple of weeks ago. So, it isn't even real current.

Q. Did it have anything to do with the courtroom procedures to be followed in that case?

A. No.

Q. Did you get any impression from any of those articles or books, how a trial is supposed to work?

A. No.

Q. You understand, Mrs. Bennett, do you not, that you,

1 if you are on this jury, one of the judges of whether witnesses  
2 in the case are to be believed or not?

3 A. Yes.

4 Q Do you feel that you are -- you'd have any  
5 problem testing the credibility or believability of people who  
6 were called to testify in this case?

7 A. I don't believe so.

8 Q The Judge mentioned to you the reasonable doubt  
9 standard and I'm sure that the Court will instruct you, if you  
10 are on this jury, at a later time, that reasonable doubt means  
11 just that; if you find that the doubt that the defendant  
12 committed the crime is a reasonable doubt then you must acquit  
13 him. But, a reasonable doubt doesn't mean a fanciful doubt.  
14 A person could conjure up a doubt about almost anything.

15 As a juror, if you are selected, it would be up  
16 to you to determine whether or not you are certain in your own  
17 mind that the defendant committed a crime; that is whether the  
18 charge has been proved beyond a reasonable doubt.

19 Do you feel any confusion about the difference  
20 between a reasonable doubt and a fanciful or imaginary doubt?

21 A. I think I could make that determination.

22 Q Do you agree that the doubt which will acquit must  
23 be reasonable?

24 A. Yes.

25 Q We have no desire to pry unnecessarily into your

1 personal affairs, but there are a few questions, I hope you bear  
2 with us, just is our duty to get some background information so  
3 I'd like to ask you a few of those questions.

4 Could you tell us where you were born?

5 A. My folks lived in Tensed, Idaho. I was born in  
6 Spokane, Washington.

7 Q. In Spokane? And what is your educational background?

8 A. High school and one year of business college.

9 Q. What kind of courses did you study in business  
10 college?

11 A. Secretarial, a few accounting, typing.

12 Q. You are now with the United States Department of  
13 Agriculture; is that correct?

14 A. Yes.

15 Q. What's the nature of your work with the U.S.D.A.?

16 A. District Clerk.

17 Q. What is your religious preference?

18 A. Protestant.

19 Q. And do you attend church regularly?

20 A. No.

21 Q. You have some children?

22 A. No.

23 Q. Oh, you do not? I see. Mrs. Bennett, do you know  
24 any of the attorneys in this case?

25 A. No.

1 Q And do you have any close friends or relatives that  
2 you know of who know any of the attorneys who are participating?

3 A No.

4 Q Have you or any member of your family, or close  
5 friends, been in any legal difficulties or involved in any  
6 criminal or civil lawsuits?

7 A No.

8 Q Have you ever been a witness in a criminal case  
9 before?

10 A No.

11 Q Have you had any jury experience before?

12 A No.

13 Q Do you do any volunteer work of any kind,  
14 Mrs. Bennett?

15 A I'm on the Water and Sewer Board in the town of  
16 Avery.

17 Q Town of Avery?

18 A Kind of a volunteer.

19 Q If it turned out that the evidence in this case  
20 demonstrates that the victims, people who were killed, were  
21 not nice people, in fact, were bad guys; would that tend to make  
22 you believe -- feel in your mind that that would tend to excuse  
23 murder?

24 A No.

25 Q Have you ever discussed this case with anyone who

1 believed that the defendant was guilty or not guilty?

2 A. No.

3 MR. THOMAS: Pass the juror for cause, Your Honor.

4 MR. ROBINSON: May I proceed, Your Honor?

5 THE COURT: Yes.

6

7

VOIR DIRE EXAMINATION

8 BY MR. ROBINSON:

9 Q. Mrs. Bennett, I joined in with what Mr. Thomas  
10 stated about our questions with not intending to pry into your  
11 private affairs, but we do have to perform our duties in order  
12 to select an unbiased, unprejudiced jury; you understand that,  
13 do you not?

14 A. Yes.

15 Q. Did you, by chance, happen to see this documentary  
16 film entitled Kathryn, about a girl revolutionary?

17 A. No.

18 Q. Now, you said that your religious affiliation was  
19 Protestant. Which denomination?

20 A. Non-denominational.

21 Q. All right. And would you classify your attendance  
22 in church service sporadic?

23 A. Yes.

24 Q. Do you believe in God?

25 A. Yes.

1 Q Do you believe that Satan exists?

2 A Yes.

3 Q And during the course of your residing in this  
4 area in the last couple of years especially, have you been a  
5 party to, or heard any conversations regarding the practice of  
6 witchcraft here in the Silver Valley area?

7 A I hear very little, being over in Avery. We just  
8 very seldom come over to this area and I don't get a paper from  
9 this area, so --

10 Q So, your answer to that question is "no" you  
11 haven't heard anything of that nature?

12 A No.

13 Q All right. What are some of the hobbies that you  
14 and your husband participate in?

15 A At the present time we're building our house and --

16 Q As a hobby? Avocation?

17 A Yeah, it's about the only thing we have time for.

18 Q And specifically, since both you and your husband  
19 are working with the Forest Service, do you read books?

20 A No.

21 Q You don't own motorcycles?

22 A No.

23 Q Now, Mr. Thomas inquired about any involvement of  
24 relatives, family friends in crime. Have any of your close  
25 friends, relatives, been victims of crimes, activities against

1 them?

2 A. No.

3 Q. Do you know whether or not a John Birch Society  
4 exists here in this area?

5 A. I haven't any idea.

6 Q. And have never associated with anyone that is a  
7 member of the John Birch Society?

8 A. No, not to my knowledge.

9 Q. Now, Mrs. Bennett, you know yourself better than  
10 anyone else in this courtroom and you know your whole mental  
11 make-up and your own personality. Is there anything in your  
12 examining yourself in your mind that you feel would disqualify  
13 you to sit as a juror in this case?

14 A. I don't believe so.

15 Q. And based upon that answer, do you feel that if  
16 selected you would be an unbiased, unprejudiced juror, able to  
17 provide a fair trial to both the State and to the defendant,  
18 Mr. Creech?

19 A. Yes.

20 MR. ROBINSON: Your Honor, we pass Mrs. Bennett for  
21 cause.

22 THE COURT: All right. We'll ask you to step back into  
23 the jury room and remain there, Mrs. Bennett, and ask you not to  
24 discuss the questions with any of the jurors.

25 I was just handed a note by the Bailiff that

1 indicates that number 71, Vicki L. Mabes, they just had a death  
2 in the family and she's asked to be excused. Any objection,  
3 Counsel?

4 MR. REMAKLUS: No.

5 MR. ROBINSON: No objection, Your Honor.

6 THE COURT: All right, number 71, Vicki L. Mabes, may  
7 be excused.

8 Bring in Arlene Sorenson.

9 MR. REMAKLUS: What number is that, Judge?

10 THE COURT: One hundred four.

11  
12 ARLENE C. SORENSON,  
13 a prospective juror herein, having been first duly sworn, took  
14 the stand and testified as follows:

15  
16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q Mrs. Sorenson, I'm going to ask you a few questions  
19 first and, then, the attorneys will want to ask you a few  
20 questions. Everything, all these proceedings have to be  
21 reported by the Court Reporter, so, I -- if you would answer  
22 audibly and not just nod your head and, perhaps, speak loudly  
23 enough so he can hear you.

24 A. Yes.

25 Q I want to just explain to you first a little bit

1 about the length of the trial and, perhaps, some of the  
2 inconveniences the jurors will be subjected to on the trial;  
3 see if that creates problems for you.

4 None of us know for sure how long the trial will  
5 last at the present time, but the best estimate we can make is  
6 about three weeks. I think that's a reasonable estimate.

7 After the selection of a jury has been completed  
8 and the jury is sworn to try the cause and the trial actually  
9 commences, we'll do what we call sequester the jury; which means  
10 the jury will be housed in a motel at night, take their meals  
11 in restaurants under the supervision of the Bailiffs and won't  
12 be able to go home during recesses or evenings.

13 Is there anything in your personal life or home  
14 situation or your -- any work situation that would make it  
15 impossible for you to do this, or create an extreme hardship?  
16 We know at the outset it's going to be inconvenient so we know  
17 -- so we don't ask them in terms of convenience, but in terms of  
18 a real serious problem it might create in your life.

19 A. No, no real problem.

20 Q. Turn to another matter, then, Mrs. Sorenson.

21 Under our law, our system of justice, a defendant  
22 in a criminal action is presumed to be innocent until his guilt  
23 is established beyond a reasonable doubt by the State. Now,  
24 those are, of course, on trial I will give you more detailed  
25 instructions of the meaning of those terms, but for the present

1 purposes the effect of it is that at this stage of the proceeding  
2 Mr. Creech must be considered to be innocent under that principle  
3 of law.

4 Just as a practical matter, it means that he  
5 doesn't have to come forward with anything to prove his  
6 innocence, the burden is on the State to go forward with the  
7 evidence and their burden is to prove him guilty beyond a  
8 reasonable doubt. As I say, the effect of this principle is,  
9 as we start the trial, before any evidence is presented, this  
10 principle requires the defendant to be considered innocent.

11 Now, are you able at this time to give Mr. Creech  
12 the full benefit of this principle and consider him to be  
13 innocent at this stage?

14 A. Yes, I am.

15 Q. Have you read or heard anything about this case  
16 in the newspapers or on radio or TV or from any other source?

17 A. I have not read one article.

18 Q. You haven't read a single article? Heard anything  
19 on radio or TV?

20 A. No.

21 Q. Had conversations with friends or --

22 A. Yes.

23 Q. Have you had any conversations with anyone that  
24 purported to know any facts about the case?

25 A. No, I haven't.

1 Q Do you have any distinct recollection of any  
2 specific facts that have stuck in your mind that someone else  
3 has told you about the case?

4 A None except what you said yesterday.

5 Q That's all you really know --

6 A That's all I know.

7 Q -- about the case?

8 Is there anything else that, perhaps, I haven't  
9 asked you about that's caused you to form an opinion about guilt  
10 or innocence of the defendant at this point; other than the  
11 presumption I've already told you about?

12 A No.

13 Q Turning to another subject, Mrs. Sorenson, under  
14 our law, neither the jury nor the Judge has any discretion as  
15 to penalty to be imposed on a First Degree Murder conviction.  
16 The legislature has fixed that, absolutely, leaving no  
17 discretion to the jury or the Judge.

18 The legislature has made the death penalty mandatory  
19 for a First Degree Murder conviction. Now, knowing this to be  
20 the law, do you have any personal beliefs or feelings about the  
21 death penalty which would prevent you from fairly considering  
22 the evidence and the law bearing on the charge of First Degree  
23 Murder?

24 A I don't know how to answer that. I can say I  
25 don't know how to answer that.

1 Q Well, apparently you do have some personal  
2 feelings and reservations about the death penalty. Why don't  
3 you just tell us what those are, first.

4 A Well, if I don't like to see a convicted murderer,  
5 say, that has a life sentence free because they can eventually,  
6 if they have a life sentence, but not in this state, I didn't  
7 know that.

8 So, if a person is found guilty I guess that's --

9 Q I think the real thrust of the question,  
10 Mrs. Sorenson, is whether you could entertain even the thought  
11 of convicting somebody of First Degree Murder under the evidence  
12 in the law if you felt it was proved, knowing that the death  
13 penalty would be automatic?

14 A I don't think I could.

15 Q So we have it absolutely clear, completely, just  
16 phrase it in a little bit different way. Would your feelings  
17 about the death penalty preclude you, or prevent you, from  
18 finding a defendant guilty of First Degree Murder under any  
19 state of the evidence?

20 A Yes.

21 THE COURT: State want to challenge?

22 MR. REMAKLUS: Yes.

23 THE COURT: Yes, any resistance?

24 MR. ROBINSON: No resistance, Your Honor.

25 THE COURT: All right. We appreciate your frankness,

1 Mrs. Sorenson, and we will excuse you then from serving on the  
2 case.

3 I would ask you to still abide by the admonition  
4 if you run into another member of the panel, don't discuss  
5 questioning with them. You are still subject to call on other  
6 cases, but we don't have a specific date for you to report.  
7 So, you are just subject to call by the Jury Commissioner.

8 Thank you for your time and your appearance.

9 Bring in David L. Smith, that's number 103.

10  
11 DAVID L. SMITH,  
12 a prospective juror herein, having been first duly sworn, took  
13 the stand and testified as follows:

14  
15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q Mr. Smith, I'm going to ask you a few questions  
18 first and, then, the attorneys will want to ask you a few.  
19 Everything that we do here has to be reported by the  
20 Court Reporter, so we will ask you to answer audibly and loudly  
21 enough for him to hear you.

22 A Yes, fine.

23 Q Go over, first, the problem whether you have any  
24 problems that would prevent you from serving because of the  
25 way the trial would be handled as far as the jury is concerned.

1           None of us know for sure how long the trial will  
2 last, of course, at this point, and our best estimate is about  
3 three weeks. I think that's, probably, a reasonable estimate.

4           Once the selection of the jury is entirely  
5 completed and the jury has been finally chosen and sworn to try  
6 the case, the trial actually commences, the jurors will be what  
7 we call sequestered; which means they'll be housed in a motel,  
8 they'll have their meals in restaurants under supervision, they  
9 won't be able to go home for recesses or anything.

10           Is there anything in your personal life, your  
11 home situation or your work that would make it impossible for  
12 you to do this, or create an extreme hardship? We know it is  
13 inconvenient, it isn't going to be convenient, but we'll ask  
14 you whether it's a real serious problem that you have. Do you  
15 have any such problem?

16           A. Well, I feel that my business, I own my own  
17 business and it's an automobile dealership and it's a business  
18 that requires a great deal of attention and great deal of  
19 management and we have, you know, a lot of situations involving  
20 credit and that should be -- somebody has to make the decision  
21 on it as an example. For me to be gone for a very long, or  
22 protracted length of time would pose quite a serious problem  
23 for me.

24           In my business I could be gone a week or ten days  
25 or something like that and, you know, some of those things

1 could wait, but, if it was anything to take very long, a trial,  
2 it would be very difficult for my business. I've hired a new  
3 sales manager who has been on the job just a few weeks now and  
4 who is in the training process and he's running the store for  
5 me right now. But, he really doesn't have the experience to  
6 step into this kind of a position at this time.

7 Q Would it make any difference in the situation,  
8 Mr. Smith, to know that you wouldn't be held entirely  
9 incommunicado. In other words, you will be under an oath not  
10 to discuss the case among yourselves or with any other person  
11 or let somebody give you information about the case from  
12 outside. But, this wouldn't preclude you from, you know,  
13 sending messages out on personal matters or business matters,  
14 getting information as long as it doesn't deal with the case.

15 Would this relieve the situation enough to be  
16 able to, you know, at least have some communication. It will  
17 have to go through the Bailiffs, but have some communication  
18 with your office?

19 A Well, just like yesterday morning I went down,  
20 you know, and worked before and went down to work this morning  
21 before I came up and went down and worked last night and -- but,  
22 you know, with the jury being sequestered, well, that would  
23 preclude that.

24 Q You wouldn't be able to do that.

25 L. No.

1 Q That's right. You don't have -- you don't feel  
2 you have management personnel there that can take over for this  
3 long period, then?

4 A Well, right at this particular time I really don't  
5 feel that I do. I did have, you know, just prior to making  
6 this change -- well, made this training in management about two  
7 weeks ago and at that time, well, I may have had more time to  
8 do something like this. But, at this time, it would pose a  
9 hardship that way.

10 THE COURT: Well, do Counsel care to inquire on this  
11 point?

12 MR. ROBINSON: Your Honor, with my personal feeling,  
13 with six children as I see on his questionnaire and with this  
14 kind of a problem on his mind, I don't believe that he'd be  
15 able to give us his full concentration, so I would have no  
16 resistance.

17 THE COURT: Mr. Remaklus?

18 MR. REMAKLUS: Well, I'm not going to object either.  
19 I think this is the kind of a man that we should have on the  
20 jury, but I think he's in a very difficult situation. I feel  
21 for you in that regard, so, I would have no objection to  
22 excusing Mr. Smith.

23 THE COURT: Is it your desire, then, to be excused  
24 under the circumstances?

25 THE WITNESS: If it please, Your Honor, it would be,

1       yes.

2               THE COURT: All right. We'll excuse you, then. We  
3       appreciate your appearance and the time you've spent here.  
4       I'll ask you not to discuss the questioning with the other  
5       members of the panel if you happen to run into them.

6               You will be subject to call on other cases by the  
7       Jury Commissioner but we don't have a specific date for you to  
8       appear at this time.

9               THE WITNESS: Fine. Thank you.

10              THE COURT: We've exhausted the members of the panel  
11       that we have over here so we will have to draw three more  
12       names to complete the 12, then.

13              I'll ask the Clerk to do that at this time.

14              THE CLERK: Number 68, Marijean Lemieux; number 109,  
15       Brenda Lee Stinson; number 118, Rose E. Williams.

16              THE COURT: I wonder if we could get information over  
17       to Mr. Farley to get those three jurors over here.

18              So, we'll be in recess.

19              (Recess taken.)

20              THE COURT: Counsel ready to proceed at this time?

21              MR. ROBINSON: Yes, Your Honor.

22              THE COURT: Mr. Thomas, you ready without Mr. Remaklus?

23              MR. THOMAS: I'm sure we can, Your Honor.

24              THE COURT: Bring in Marijean Lemieux.  
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MARIJEAN LEMIEUX,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mrs. Lemieux, I want to ask you a few questions  
first and then the attorneys will want to ask you some. The  
Court Reporter has to get a record of all the proceedings here  
so it will be necessary for you to answer audibly rather than  
nod your head and also to speak loudly enough for him to hear  
you.

A Well, okay.

Q First, I just want to discuss with you a little  
bit how we'll handle the procedure once the jury is selected  
and the trial starts.

None of us know at this point exactly how long the  
trial will last but our best estimate is three weeks, and that's  
probably a reasonable estimate.

A I see.

Q Once the jury is completed, selected and sworn to  
try the cause and we actually start the actual trial, the  
case, then the jury will be what we call sequestered; this  
means the jury will be housed in a motel and take their meals  
in restaurants under the supervision of the Bailiffs, won't be

1       able to go home during recesses or at night.

2               I'm wondering if there's anything in your  
3       personal life, your home situation or any work situation that  
4       would make this impossible for you to do, or create an extreme  
5       hardship. We know it will be inconvenient to begin with, so  
6       it will be for all jurors, so we don't ask in terms of  
7       convenience, but in terms of impossibility or real serious  
8       problems.

9               Do you have -- would this create a real serious  
10       problem in your life?

11              A.     Well, when it starts getting cold I couldn't care  
12       much about driving, I mean, with the roads getting bad.

13              Q.     Well, now, you understand the arrangements have  
14       already been made that the motel the jurors will be housed in  
15       the Stardust Motel. I don't -- there will be very little  
16       driving involved, just between the Stardust and the Courthouse.

17              A.     I see.

18              Q.     You wouldn't be driving at all. There will be a  
19       bus to transport the jurors anyplace they have to go. So, you  
20       wouldn't have to do any driving during this period. Any other  
21       problems you'd have?

22              A.     Not that I can think of.

23              Q.     All right, fine. I'm going to turn to another  
24       subject, then, Mrs. Lemieux.

25                     Under our law and system of justice a defendant in

1 a criminal action is presumed to be innocent until his guilt  
2 is established beyond a reasonable doubt by the State. Now,  
3 this means, of course, that he doesn't have to prove anything  
4 to prove his innocence or put on any evidence to prove his  
5 innocence. The burden is on the State to go forward and prove  
6 him guilty beyond a reasonable doubt. This burden is entirely  
7 on the State.

8 What this means, as a practical matter, at the  
9 beginning of a trial like this, before any evidence has been  
10 presented or anything heard about the case, the defendant is  
11 considered innocent. Now, are you able at this time to give  
12 Mr. Creech here the benefit of this principle in full and  
13 consider him innocent at this time?

14 A. Not honestly.

15 Q. Is this because of something you've heard or read  
16 about the case?

17 A. Well, of course, that's been four months.

18 Q. Is this what creates the problem or you just can't  
19 accept that principle?

20 A. Well, that's, really, hard to say.

21 Q. You understand what this does is establish the  
22 burden of proof. In other words, we could have a system,  
23 maybe some countries do, but you put the burden on the  
24 defendant, you start out and say if he's arrested he's  
25 presumed guilty and make him prove his innocence. But, you see,

1 that isn't our system. Our system is concerned about not  
2 convicting an innocent person, so we put the burden on the  
3 opposite way. We say a defendant is innocent until the State  
4 produces evidence to prove him guilty beyond a reasonable doubt.

5 A. I understand that, yes.

6 Q. Can you accept that general principle?

7 A. It would be hard.

8 Q. So, you are not talking just about this specific  
9 case, you are talking about in any criminal case you'd have a  
10 difficulty accepting that principle?

11 A. I feel I would, yes.

12 Q. Does this mean, Mrs. Lemieux, you can't seriously  
13 entertain the thought that, maybe, at times, innocent people  
14 might be charged with crimes?

15 A. Again that's kind of hard to say.

16 Q. You see, this is the whole thrust of the  
17 philosophy and this principle, it assumes that it is possible  
18 for innocent people to be charged.

19 A. Yes.

20 Q. So, that's why we start out with the presumption  
21 everybody is innocent. And then make the State prove the case.  
22 You still have difficulty with that principle; do you?

23 A. I think I do. I think I'd just have a hard time  
24 being impartial.

25 THE COURT: Counsel --

1 MR. ROBINSON: I stipulate, Your Honor.

2 MR. REMAKLUS: Yes, she may be excused, Your Honor.

3 THE COURT: All right. We appreciate your time you've  
4 spent here, your appearance and frankness, Mrs. Lemieux. I'll  
5 ask you to abide by the admonition not to discuss the case with  
6 any prospective jurors if you happen to run into them. Don't  
7 discuss the questioning here with them.

8 THE WITNESS: All right, I won't.

9 THE COURT: You will be subject to further call but we  
10 don't have a specific date for you. The Jury Commissioner  
11 will get in touch with you if you have to report so you may be  
12 excused.

13 Bring in Brenda Lee Stinson.

14  
15 BRENDA LEE STINSON,  
16 a prospective juror herein, having been first duly sworn, took  
17 the stand and testified as follows:

18  
19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q Is it Mrs. Stinson or Miss?

22 A Mrs.

23 Q Mrs. Stinson, I'm going to ask you a few questions  
24 first, Mrs. Stinson, and the attorneys will have some  
25 questioning. Everything we do here has to be reported by the

1 Court Reporter so it will be necessary for you to answer the  
2 questions audibly and not just nod your head but also speak  
3 loudly enough so he can hear you.

4 A. Okay.

5 Q. I want to discuss first with you some problems  
6 of how we handle the case and inconvenience the jurors will  
7 have under this particular case and if this creates a problem  
8 for you.

9 We don't know how long the case will last right  
10 now, but our best estimate is about three weeks.

11 A. Um-hmm.

12 Q. That's probably a reasonable estimate.

13 Once the jury is completely selected and sworn to  
14 try the cause and actual trial commences the jurors will be  
15 what we call sequestered; this means that they'll be housed in  
16 a motel, have to eat in restaurants under the supervision of  
17 the Bailiffs and won't be able to go home at night or recesses.

18 Now, is there anything in your personal life, your  
19 home situation or work that would make this impossible for you  
20 to do or create an extreme hardship? We all start with the  
21 assumption it's going to be inconvenient for all the jurors,  
22 so we can't -- we don't ask in terms of convenience, it's in  
23 terms of whether there's any real serious problem in your  
24 situation.

25 Now, do you have any personal problems that make

1 this impossible, extremely hard for you to do?

2 A. No, just my job, I'm married, that's all.

3 Q. You do have a law that protects jurors and says  
4 that employers can't fire them, or cause them to lose their  
5 job or else they get in trouble. Are you under any threats of  
6 losing your job or anything like that?

7 A. No.

8 Q. If you have to serve --

9 A. I'm a seamstress and there's only two of us at  
10 the smelter.

11 Q. Are you an employee or is it your own business?

12 A. No, I'm employed by the smelter, Bunker Hill.

13 Q. So, that's the only problem you see right now?

14 A. Yeah. My husband, we haven't been married too  
15 long.

16 Q. Do you think he'd appreciate you when you came  
17 home?

18 A. Yes.

19 Q. Do you think he could manage without you, though?

20 A. Well, if it was three weeks it wouldn't be too  
21 bad, I was thinking six weeks or so.

22 Q. Let's turn to another subject, then, Mrs. Stinson.  
23 Under our philosophy of law and our system of justice a  
24 defendant in a criminal action is presumed to be innocent until  
25 his guilt is proven beyond a reasonable doubt and this puts

1 the burden on the State to go forward and prove him guilty  
2 beyond a reasonable doubt and means he doesn't have to do  
3 anything to prove his innocence. Do you understand that?

4 A. Um-hmm, yeah.

5 Q. This principle of law means, then, that at this  
6 stage of the proceeding and no evidence has been presented,  
7 that Mr. Creech has to be considered to be innocent. Now, are  
8 you able at this time to give him the full benefits of this  
9 principle and consider him to be innocent at this time?

10 A. Well, I consider him innocent.

11 Q. You consider him innocent?

12 A. Um-hmm.

13 Q. All right, fine. Have you read or heard anything  
14 about this case in the newspapers or radio or TV or from any  
15 other source?

16 A. The first day I got my summons my husband called  
17 me and told me that it was for Mr. Creech. He figured it was  
18 for Mr. Creech, but that's all I've heard.

19 Q. Did he give you any facts that he purported to  
20 know about the case or tell you anything?

21 A. Just that he was accused of killing two men in  
22 Boise.

23 Q. That's all he said?

24 A. Yeah.

25 Q. Have you heard or read any other reported facts

1 about the case?

2 A. Nothing.

3 Q. That's all you've heard until you came to court?

4 A. Until I came.

5 Q. You've already indicated you can give Mr. Creech  
6 the benefit of the presumption of innocence so I take it that  
7 means you haven't formed any opinion as to guilt or innocence  
8 other than giving him the benefit of that presumption at this  
9 time?

10 A. Right.

11 Q. Another subject I wanted to discuss with you,  
12 Mrs. Stinson, under our Idaho law, neither the jury nor the  
13 Judge has any discretion as to the penalty to be imposed in  
14 a First Degree Murder conviction. The legislature has made  
15 that decision and made it automatic and mandatory and that  
16 under the law is a death penalty for First Degree Murder and  
17 the legislature has just done that and doesn't leave within the  
18 discretion of the jury or Judge.

19 A. That is the penalty?

20 Q. Yes.

21 A. I thought that ---

22 Q. In Idaho it is.

23 A. Oh.

24 Q. It's different in every state, but in Idaho the  
25 legislature has passed a law making that the penalty.

1                   Knowing this to be the law, do you have any  
2                   personal beliefs or feelings about the death penalty which  
3                   would prevent you from fairly considering the evidence in the  
4                   law bearing on the charge of First Degree Murder?

5                   A.     I don't know. Do you mean do I have any personal  
6                   feelings about the death penalty?

7                   Q.     Well, I'm not interested in whether you have  
8                   personal feelings. I'm wondering as to the extent of them  
9                   and whether you have them -- whether they would interfere with  
10                  your, really, seriously considering that particular charge and  
11                  weighing the evidence and considering the law on that charge,  
12                  First Degree Murder.

13                  A.     I think it would bother me quite a bit.

14                  Q.     I --

15                  A.     I mean, I think it would.

16                  Q.     Do you think you would have a hard time even  
17                  considering, finding, returning a First Degree Murder  
18                  conviction?

19                  A.     I think I would.

20                  Q.     Knowing that that penalty was automatic?

21                  A.     Um-hmm.

22                  Q.     Let me put it this way just to, perhaps, a little  
23                  stronger. Would these personal feelings that you have about  
24                  the death penalty just prevent you from finding a defendant  
25                  guilty of First Degree Murder under any state of the evidence?

1           A.    Well, I think if they convinced me that he had  
2 murdered two people, then, maybe there it would be different,  
3 I would feel.

4           Q.    You think you might be able to return if it was  
5 proved beyond a reasonable doubt?

6           A.    Yeah.

7           Q.    Of course, that's what we're talking about is  
8 proof beyond a reasonable doubt. But, you feel that if this  
9 was proved beyond a reasonable doubt, you could bring yourself  
10 to return a verdict of First Degree Murder?

11          A.    I think so.

12          Q.    I'll advise you, Mrs. Stinson, that under our law  
13 the jurors are the judges of the facts and the Court  
14 instructs the jury on the law. Is there anything that would  
15 prevent you from following the law as I would give it to you?

16                In other words, if I give you some principle of  
17 law that you personally didn't understand was the law or you  
18 might personally disagree with, would you still follow the  
19 instructions of the Court?

20          A.    Yeah.

21          Q.    All right. Do you know of anything that we  
22 haven't talked about here that would prevent you from being  
23 fair and impartial to both sides in this case?

24          A.    Nothing.

25          Q.    No --

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A. I just --

THE COURT: All right, Counsel may inquire.

MR. REMAKLUS: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mrs. Stinson, to be confronted with the proposition of the death penalty is quite an overwhelming thought, I would imagine, you walk in here and find this out.

I think what we're trying to determine is that if you could sit and listen to the evidence and make up your mind as to guilt or innocence based on the evidence, without being influenced by the fact that if you decide guilty there's a death penalty.

A. Yeah, that's --

Q. This is the big question.

A. I think it would really bother me to have to -- for me to have to say someone should die, I just don't -- it's a real problem.

Q. You think that would prevent your objective analysis to the evidence?

A. I think it would have a lot to do with it. I really do.

Q. You think it would prevent you from looking at it coldly and objectively?

1           A.   Well, they'd have to prove -- they have to really  
2 prove to me that they -- I mean, that he did it, that's all.

3           Q.   Now --

4           A.   I've never been faced with something like that.

5           Q.   It's quite a load to have dumped on you, we're  
6 all aware of that.

7                     Now, as the Court has advised you, he will read  
8 you the instructions as to what the law is in this particular  
9 case. I'm sure that in those instructions he's going to  
10 define what reasonable doubt is. Could you pay particular  
11 attention to that?

12          A.   (No audible response.)

13          THE COURT: Would you answer audibly so the  
14 Court Reporter can get it?

15          THE WITNESS: Oh, yes.

16          Q.   BY MR. REMAKLUS: You think you could listen  
17 to the Judge's instructions and be able to distinguish the  
18 difference a reasonable doubt in your own mind or as between  
19 a doubt that might be convenient so you could rationalize your  
20 own conscience and say not guilty of First Degree Murder?  
21 Could you make that distinction?

22          A.   I don't know if I could or not. I wish I could  
23 give you better answers, but --

24          Q.   I think you are being very frank and very honest,  
25 Mrs. Stinson.

1                   You've only been married a short time, is that  
2     right?

3           A.     (No audible response.)

4           Q.     How long have you worked over there for  
5     Bunker Hill?

6           A.     For four years.

7           Q.     What kind of a job do you have there?

8           A.     I'm a seamstress.

9           Q.     What do you do as a seamstress for a mining  
10    company?

11          A.     I sew -- I mend coveralls and I make all the  
12    tote bags and flashlight holders; everything that is -- tarps  
13    and things.

14          Q.     I understand that. Thank you. And did you grow  
15    up here in this area?

16          A.     No, I didn't.

17          Q.     Yeah, I see three and a half years. Where did you  
18    grow up, Mrs. Stinson?

19          A.     Well, I grew up pretty well all over the States,  
20    California, Twenty-Nine Palms.

21          Q.     Were your parents in the Service?

22          A.     My dad was in the Marine Corps.

23          Q.     Did you finish high school?

24          A.     Yes.

25          Q.     Have you had any other kind of formal education?

1 A I went to three years of college in Calgary,  
2 Alberta.  
3 Q What did you do up there?  
4 A I took fine art.  
5 Q Um-hmm. And you've lived down here in this area  
6 ever since you came to Idaho, then?  
7 A Well, off and on. I've -- when I came back from  
8 college, I've been married before.  
9 Q Um-hmm.  
10 A And I lived in England for two years, almost  
11 two years, and then I came back to Idaho.  
12 Q Um-hmm. So, you figure on making this area your  
13 home now; is that it?  
14 A Yes.  
15 Q I see your husband is also -- he's got a pretty  
16 good job over there at Bunker Hill, he's a foreman?  
17 A Yes.  
18 Q Does he work a pretty good sized crew?  
19 A Big, he works for the high line, about 70-some  
20 people, I think.  
21 Q Um-hmm. Do you folks have a religious preference?  
22 A Well, I don't know.  
23 Q Do you and your husband attend church with any  
24 degree of regularity?  
25 A No.

1 Q Do you kind of -- what kind of hobbies do you  
2 folks have?

3 A A lot of hobbies.

4 Q What do you like to do? What do you and your  
5 husband do?

6 A Right now we're remodeling our house and getting  
7 it ready to sell.

8 Q And what else do you do? Do you hunt and fish  
9 and do things like that?

10 A Well, we have a boat and we go water skiing a  
11 lot and we do a lot of things all summer. We're always busy.

12 Q Um-hmm. Have any of your family, or your friends  
13 ever been in trouble with the law that you know of?

14 A My dad.

15 Q Did he have some trouble in the Service?

16 A In California, that's the only part I know, not  
17 in the Service, no. It was just drinking. It was nothing  
18 serious.

19 Q I see. Is that all over and done with now?

20 A Yes, my parents are divorced.

21 Q Um-hmm. I'm assuming that we're all strangers  
22 to you, the attorneys and Judge and everyone else? You've  
23 never been on a jury before, have you?

24 A No, I haven't.

25 Q What kind of -- do you folks take the newspapers

1 at your house?

2 A. Yes.

3 Q. What papers do you get?

4 A. The Kellogg Evening News.

5 Q. Do you watch television?

6 A. Yes, I don't watch the news much, though.

7 Q. Um-hmm. What kind of books -- do you take any

8 magazines in the mail?

9 A. The Elks Magazine and things like that.

10 Q. Do you pick up magazines off the newsstand?

11 A. I get Family Circle once in awhile.

12 Q. You haven't got any preconceived idea about what

13 a trial should be about, watching Petrocelli or anything, have

14 you?

15 A. The only idea I have is it should be over in an

16 hour, that's all.

17 Q. I think the Judge has already taken care of that

18 aspect of that; hasn't he?

19 A. Yes.

20 Q. We may be here for quite awhile. Do you think

21 you could give us your undivided attention for three weeks?

22 A. I think I'd be a little concerned about my

23 husband.

24 Q. Oh, I'm sure you would, but --

25 MR. REMAKLUS: We'll pass the juror for cause,

1 Your Honor.

2 MR. ROBINSON: If I may proceed?

3 THE COURT: Yes.

4  
5 VOIR DIRE EXAMINATION

6 BY MR. ROBINSON:

7 Q Mrs. Stinson, do you believe in God; even though  
8 you don't regularly attend church?

9 A Yes, I believe in God.

10 Q Do you believe in the existence of Satan, the  
11 devil?

12 A No.

13 Q To you he's non-existent?

14 A He's non-existent.

15 Q All right. During the time that you've been here  
16 and, specifically the last year, year and a half, two years,  
17 have you been a party to any conversation or heard any  
18 conversation about the practice of witchcraft here in  
19 Silver Valley?

20 A I've heard a lot about witchcraft.

21 Q Would you tell us whatever you heard?

22 A Well, just people talking about things, mostly  
23 gossip, you know, from people up the river or on the past,  
24 something happened there one night, people stopping cars or  
25 something.

1 Q. Um-hmm.

2 A. And mostly just gossip, nothing concrete.

3 Q. And is that the way you accept it, it is just

4 rumor and gossip.

5 A. Gossip. I've never seen any evidence of anything.

6 Q. And when this information comes to you, what is

7 your attitude regarding it?

8 A. Well, it frightens me, that's all, to think that

9 maybe there is something around like that, that's all.

10 Q. All right. Now, do you and your husband

11 participate in the sport of motorcycling?

12 A. No.

13 Q. Now, the Prosecutor has asked you about any of

14 the family or relatives, close friends being in trouble with

15 the law. Have any of your friends, relatives, close family,

16 been victims of any crimes against them?

17 A. No.

18 Q. And what I gather from your answers to all of the

19 questions propounded to you by His Honor, Judge Durtschi, and

20 Mr. Remaklus, is that you do feel that you can sit as a

21 impartial juror, non-prejudiced and hear this case and render

22 a verdict; is that correct?

23 A. I'm not -- I don't feel that I'm worried about

24 the death penalty, that's all.

25 Q. Let's touch on this just a minute, Mrs. Stinson.

1                   You realize that you would be only one of 12?

2                   A.    Yes.

3                   Q.    And that it would be 12 people with their  
4 combined minds interpreting all of the evidence and following  
5 the instructions of the law by the Court?

6                   A.    Yes.

7                   Q.    And it would be those combined jurors that  
8 reaches the verdict? In other words, the responsibility would  
9 not be laid on you individually to make this decision  
10 ultimately, but you would have to vote your own convictions.

11                  A.    I think that each person is responsible for what  
12 they give. You can say there's 12, but this still comes  
13 down to one, I feel.

14                  Q.    All right. But you feel that you can act as a  
15 juror in that regard?

16                  A.    I'd certainly try to be as impartial as possible,  
17 yes.

18                  Q.    Now, other than what we have asked you about,  
19 since you know yourself better than anyone else in this  
20 courtroom, is there anything else that you feel that might  
21 disqualify you to sit as a juror in this case?

22                  A.    I think I'm too sympathetic. I'm too -- I feel  
23 too much. I really think that this would bother me a great  
24 deal, it bothers me already.

25                  Q.    Beg your pardon?

1           A.    It bothers me already. I'm very nervous and I'm  
2 nervous already and I just --

3           Q.    You see, each person that is accused of a crime  
4 has a right to be tried by his peers.

5           A.    I believe that, I really do.

6           Q.    And we consider you one of his peers also.

7           A.    Right, I feel that I have, you know, I feel that  
8 I ought to give my time for my -- anything to this, I really  
9 do. This is what our country is all about. So, I feel that  
10 each one has a duty to do it.

11           MR. ROBINSON: And I agree with you and I appreciate  
12 your candor and we pass Mrs. Stinson for cause.

13           THE COURT: You'll have to wait in the jury room,  
14 Mrs. Stinson. I'll ask you not to discuss the questions  
15 with the other people.

16           THE WITNESS: What does "pass for cause" mean?

17           THE COURT: Well, it means you are qualified, unless  
18 you are excused on these pre-emptory challenges.

19                   Like I explained to you in the courtroom  
20 yesterday, this means that there's been no statutory  
21 disqualification shown in your case but each side still does  
22 have these ten pre-emptory challenges, they just have to  
23 write a name on a slip and challenge any juror.

24           THE WITNESS: I see.

25           THE COURT: Preliminarily you are seated unless you

1 are subject to a pre-emptory challenge later on.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: Bring in Rose Williams.

4  
5 ROSE E. WILLIAMS,

6 a prospective juror herein, having been first duly sworn, took  
7 the stand and testified as follows:

8  
9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q Mrs. Williams, I want to ask you a few questions  
12 first and then the attorneys will each want to ask you some  
13 questions. The Court Reporter here has to report everything  
14 that takes place in court and, so, you need to answer  
15 audibly so he can hear you and loudly enough so he can hear  
16 you, okay?

17 A Um-hmm.

18 Q I want to discuss with you first just the  
19 procedure we are going through as far as handling the jury  
20 and the case and discussing any particular problems this  
21 might create in your life.

22 We don't know how long this trial is going to  
23 last, right now a reasonable estimate, I think, is three  
24 weeks.

25 Now, once we completely select the jury and

1 start the actual trial, the jury is sworn to try the cause, we  
2 do what we call sequester the jury; this means that the jurors  
3 are housed in a motel, they have their meals in restaurants  
4 under the supervision of the Bailiffs and can't go home during  
5 the recesses until the trial is over.

6       Bearing this in mind, then, is there anything in  
7 your personal life, your home, work problems, that make this  
8 impossible or create an extreme hardship? I word it that way  
9 because we know it's going to be inconvenient and we wouldn't  
10 get a jury if it's just inconvenience, but we need to know  
11 whether your particular situation isn't just going to be  
12 impossible to live with, real serious problem arises.

13       A. Well, my husband and I run the airport, that  
14 means -- he flys and he will be gone, we figure three to five  
15 days out of the week, sometimes overnight if it's a weekend  
16 trip, he's gone Friday afternoon and Sunday night he comes  
17 home, that leaves my three teenage children without supervision.  
18 I run the books and run the airport when he's gone and that's  
19 a hardship, I think, we would face.

20       Q. You don't have any other employees?

21       A. We have a young man who's a flight instructor.  
22 We wouldn't want to leave him with the business, to run the  
23 business, and we have a young man that's a mechanic and he  
24 can't do it.

25       Q. How old are your children?

1           A.     I have one 13, 15 and 17. I think they can take  
2 care of themselves other than they wouldn't be supervised.

3           Q.     Do you have any other family here that could,  
4 maybe, help give some supervision?

5           A.     Well, I have my folks and they are gone on  
6 vacation, will be gone for two months, maybe.

7           Q.     Two months?

8           A.     Um-hmm, and I wouldn't want to call them back.  
9 They are both ill and they planned this trip and Wayne has a  
10 70-year old mother and I wouldn't want to make her do it  
11 either.

12                   Now, he has two brothers and they have six, seven  
13 children themselves, so I wouldn't want to ask them. That's  
14 all the relatives we have here.

15           Q.     You would, as far as the family, be able to contact  
16 them through the Bailiffs and have them contact you as far as  
17 checking on how they are getting along and things like that.

18           A.     Um-hmm.

19           Q.     But, of course, you wouldn't be able to go home  
20 and give any supervision personally.

21           A.     Um-hmm. We would have to hire, I think, a couple  
22 people.

23           Q.     You feel you would have to hire somebody?

24           A.     Yes, if my husband stayed home and ran the  
25 business and took care of the children we would have to hire a

1 pilot to fly the twin engine airplane and it would cost quite  
2 a bit of money. I think it would be hard to find somebody that  
3 was qualified, that would come and do it for that short a  
4 time. If I could be sure it was only three weeks I think we  
5 could probably get by, but if it ran into six weeks, it would  
6 be --

7 Q Well, there's been some talk about six. My own  
8 personal feeling is that it wouldn't last six weeks. I think  
9 three weeks is more reasonable.

10 What do Counsel feel? Resist excusing  
11 Mrs. --

12 MR. ROBINSON: I would not resist, Your Honor.

13 MR. REMAKLUS: We lose our good qualified jurors in  
14 this way, but I certainly can sympathize with her business. I  
15 wouldn't object to her being excused.

16 THE WITNESS: Thank you.

17 THE COURT: Well, all right, we'll excuse you, then,  
18 Mrs. Williams. We appreciate your appearance here and time.  
19 Please don't discuss the questioning here with other members  
20 of the panel if you happen to run into them. You will be  
21 subject to call on other cases, we don't have a specific date.  
22 The Jury Commissioner will give you a ring if you are needed on  
23 another case.

24 THE WITNESS: Thank you.

25 THE COURT: We have again exhausted the panel, we need

1 two more names.

2 THE CLERK: Number 65, Wanda J. Kurt; number 102,  
3 Roland H. Sisk, Jr.

4 THE COURT: We'll be in recess for a short time until  
5 we can get those two jurors here.

6 (Recess taken.)

7 THE COURT: Ready to proceed?

8 MR. REMAKLUS: Yes, Your Honor.

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: All right, number 65, Wanda J. Kurt.

11

12 WANDA J. KURT,

13 a prospective juror herein, having been first duly sworn, took  
14 the stand and testified as follows:

15

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Mrs. Kurt?

19 A. Yes.

20 Q. I'm going to ask you a few questions first,  
21 Mrs. Kurt, and then the attorneys will ask you. Everything we  
22 do here has to be reported by the Court Reporter here. He's  
23 seated right here so if you'll answer audibly rather than nod  
24 your head --

25 A. Okay.

1 Q -- and loudly enough so that he can hear you.

2 A All right.

3 Q I want to discuss with you first, Mrs. Kurt, the  
4 procedure we're going to use with the jury during the trial to  
5 see if this is going to cause any real problems for you.

6 We, of course, at this time don't know how long  
7 the trial is going to actually last, but our best estimate is  
8 three weeks. I think that's a reasonable estimate.

9 Once the jury is completely chosen and sworn to  
10 try the case and we actually start the actual trial the jurors  
11 will be housed in a motel, the Stardust, at night, and take  
12 their meals in restaurants under the supervision of the  
13 Bailiffs and won't be able to go home at night or during  
14 recesses.

15 Understanding that, this is the way we'll  
16 proceed, is there anything in your personal life, your home  
17 situation, work situation, you might be involved in, that will  
18 make it impossible for you to do, or create an extreme  
19 hardship? We know, before we start that it's going to be  
20 inconvenient for all jurors and we can't excuse jurors because  
21 it's inconvenient.

22 A No.

23 Q But, if they have a real serious problem or  
24 something that's a particular problem in your home life, we're  
25 surely willing to consider that.

1           A.    The only thing that really bothers me is that this  
2 is my first year teaching and I'm a third grade teacher and  
3 I really would hate to be out of the classroom that long. I  
4 have two teenage children at home, but their father is there.  
5 But, being out of the classroom when I'm just getting  
6 acquainted with my class would really be hard for me.

7           Q.    Do they have a substitute teacher?

8           A.    They have some substitutes, but there's four of  
9 us here now.

10          Q.    Four teachers?

11          A.    Not picked, but possibility, so --

12          Q.    I see.

13          A.    -- so our subs are busy, but other than that I  
14 do have a daughter that's a junior and a boy that's a  
15 ninth-grader. But, they are only home in the evenings, Dad  
16 has them.

17          Q.    They would be in school during the day and he  
18 could take care of them during the evening?

19          A.    Yes.

20          Q.    Well, we appreciate this would be an inconvenience  
21 and I understand the problem it will create for you and  
22 probably the children in your class too, but I think this is,  
23 perhaps, a situation we just have to live with.

24          A.    Okay.

25          Q.    I want to turn to another subject, then,

1 Mrs. Kurt. Under our law and our philosophy and system of  
2 justice a defendant in a criminal action is presumed to be  
3 innocent until his guilt is established beyond a reasonable  
4 doubt by the State. What this means is that he doesn't have  
5 to come forward with -- do anything to prove his innocence  
6 because the law cloaks him with the presumption of innocence.  
7 The effect of that is to put the burden on the State to prove  
8 him guilty.

9 Now, what this means at this stage of the  
10 proceeding, before any evidence is presented, is that  
11 Mr. Creech, the defendant, must be considered to be innocent.  
12 Now, are you able at this time to give him the full benefit  
13 of this principle of law and consider him to be innocent?

14 A. Yes, I believe I am because I have read nothing  
15 but one small article and it was quite some time ago, so.

16 Q. Can you -- that was the next subject I wanted to  
17 get into, Mrs. Kurt. Can you tell me what present memory you  
18 have about any facts or purported facts that were related in  
19 that article?

20 A. No, I really can't. Something about some men on  
21 a highway and that's all. It was quite some time ago and I  
22 haven't --

23 Q. You haven't read or heard anything then?

24 A. No. My husband cut out what was in the Kellogg  
25 paper before he handed it to me.

1 Q Good. I want to commend you for following my  
2 admonition, or having your husband follow it.

3 I want to turn again to another subject, then,  
4 Mrs. Kurt. I think this comes somewhat of a surprise to some  
5 prospective jurors and maybe a shock to others, but, under  
6 our Idaho law the law passed by our legislature, not too long  
7 ago, neither the jury nor the Judge has any discretion as to  
8 the penalty to be imposed for First Degree Murder. Our  
9 legislature has made the death penalty mandatory on a  
10 First Degree Murder conviction.

11 Now -- in other words, the legislature has made  
12 this choice and this decision so that isn't left up to the  
13 jury to decide, or the Court to decide.

14 Knowing this to be the law, do you have any  
15 personal beliefs or feelings about the death penalty which  
16 would prevent you from fairly considering the evidence and  
17 law bearing on the charge of First Degree Murder?

18 A No, I don't feel that I do.

19 Q It is the function of the jury, Mrs. Kurt, to  
20 try to decide the facts in the case, the Judge decides the  
21 law and gives the law to the jurors in instructions.

22 Anything that would prevent you from following  
23 the instructions that I would give to you as the law?

24 A Not that I know of.

25 Q Occasionally, I think maybe jurors find the law

1 is different than they thought it would be, or maybe they don't  
2 even agree with it when they see what it is. But, would you  
3 still follow the law as I state it to you?

4 A. Yes, I would.

5 Q. Understanding I'm the Judge of the law and you are  
6 the judge of the facts if you were the juror --

7 A. Um-hmm.

8 Q. -- do you know of anything, whether I've asked you  
9 or not, that would prevent you from being a fair and impartial  
10 juror to both sides in this case?

11 A. No, I don't.

12 THE COURT: Counsel may inquire.

13 MR. REMAKLUS: Thank you, Your Honor.  
14

15 VOIR DIRE EXAMINATION

16 BY MR. REMAKLUS:

17 Q. How many years have you been a teacher, Mrs. Kurt?

18 A. I taught Head Start for three years and I went back  
19 to Idaho last year to get my degree. So, this is my first  
20 actual contracted teaching assignment.

21 Q. Um-hmm. You think it's possible, dealing with  
22 young people the way you do, that you could still face up to this  
23 death penalty proposition?

24 A. Yes, I think I could.

25 Q. What does -- see, Mr. Kurt is employed at

1 Bunker Hill?

2 A. Um-hmm.

3 Q. How long has he worked there for the company?

4 A. Eighteen years in April.

5 Q. Um-hmm. Did you grow up in this area, Mrs. Kurt?

6 A. No. We're from North Dakota.

7 Q. You have been here quite awhile?

8 A. For 18 years.

9 Q. Do you folks have a religious preference?

10 A. Yes -- well, not a preference -- okay. I was  
11 raised Catholic and turned Lutheran and right now we're  
12 Lutheran.

13 Q. Do you attend church from time to time?

14 A. Yes, we attend church regular. I'm a Sunday school  
15 teacher.

16 Q. Um-hmm. What hobbies do you and Mr. Kurt have?

17 A. Fishing and camping mostly, other than my sewing  
18 and crocheting and knitting. But together we camp as a family.

19 Q. You take one daily paper, I guess for sure, don't  
20 you?

21 A. We take three. I don't read very much of it, but  
22 my husband does. He's an avid reader.

23 Q. What other kinds of magazines do you subscribe to?

24 A. We have the Reader's Digest and Better Homes and  
25 Gardens and the Inquirer.

1 Q Um-hmm. You folks, do you watch television?

2 A Very little. I do, I watch very little. When you  
3 teach you don't have time.

4 Q Um-hmm.

5 A When you have a family, my husband watches sports  
6 mostly, though.

7 Q You haven't got any preconceived idea about how  
8 trials are supposed to be conducted, then, from watching  
9 television?

10 A No, no, I haven't.

11 Q I assume that all of us here at counsel table are  
12 strangers to you; is this correct?

13 A Yes.

14 Q Have any of your close friends or neighbors ever  
15 been in trouble with -- as far as going to court, that you know  
16 of?

17 A No.

18 Q Have you been a juror before?

19 A No.

20 Q Now, the obligation, of course, is on the State to  
21 prove guilt beyond a reasonable doubt, Mrs. Kurt. Before the case  
22 is submitted to you, if you are finally accepted as a juror, the  
23 Judge is going to give you some rather lengthy instructions and  
24 one of the things will be a definition of reasonable doubt and I  
25 think that you will be instructed that that is not any doubt or

1 the shadow of a doubt, but a reasonable doubt that would be  
2 created within you as a reasonable person.

3 Now, with your educational background I don't think  
4 you'll have any trouble following those instructions, do you?

5 A. No, I don't believe I would.

6 MR. REMAKLUS: We'll pass the juror for cause,  
7 Your Honor.

8 MR. ROBINSON: If I may proceed, Your Honor?

9 THE COURT: Yes.

10

11 VOIR DIRE EXAMINATION

12 BY MR. ROBINSON:

13 Q. Mrs. Kurt, my questions, just like the questions  
14 from the Judge and Prosecutor, are not meant to pry into your  
15 private life; just that we need to ask them in order to do our  
16 duty and that's to select an unbiased, unprejudiced jury for  
17 trial in this matter; you understand that?

18 A. Sure.

19 Q. Now, have any members of your family or close  
20 relatives or friends ever been victims of crime?

21 A. No.

22 Q. And do you know whether or not there is a  
23 John Birch Society operating here in the area?

24 A. Not to my knowledge.

25 Q. All right. And you've told us your affiliation

1 with the church; that you were previously Catholic and now are  
2 regularly attending the Lutheran church. Do you personally  
3 believe in God?

4 A. Yes.

5 Q. Do you believe that Satan exists?

6 A. Here on earth, no -- well, yes, okay. Sinful ways,  
7 yes, and if you don't believe in God you are in trouble, okay.

8 Q. All right. And in your encounter with people and  
9 your social life and such, have you been a party to either  
10 discussing yourself or listening to conversations relating to  
11 the practice of witchcraft here in Silver Valley?

12 A. Only one time when it was concerned something about  
13 Rathdrum and some driving. It wasn't a discussion, it was a  
14 remark and that was all.

15 Q. No discussion to any extent?

16 A. No discussion or nothing.

17 Q. Now, Mrs. Kurt, it may occur in the course of this  
18 trial that not only profanity, vulgar, crude, coarse words and  
19 descriptions will be made, but also it may come to pass that  
20 there will be color photographs of the deceased victims that are  
21 grotesque. Will this, in itself, cause you a prejudice against  
22 the defendant?

23 A. No.

24 Q. Actually, if you are selected as a juror you will  
25 listen to all of the facts and not allow this to inflame you?

1 A. No, it would not.

2 Q. Are you acquainted with the use of drugs by youth  
3 in this area?

4 A. Well, when you've got two teenage children, you are  
5 to a certain extent, but -- and you know, it's there, and as  
6 far as being directly involved with it, no.

7 Q. Does the use of drugs cause a personal affront to  
8 you?

9 A. Well, if you go to heroin and stuff, I'd say  
10 probably.

11 Q. And with that personal affront, would that tend to  
12 prejudice you?

13 A. Not against a person that was using it, no, but I  
14 wouldn't want to do it. I mean, I wouldn't want to do it, but  
15 it wouldn't prejudice me against somebody that was doing it.

16 Q. What are the types of hobbies that you and your  
17 husband and your family participate in?

18 A. Okay. We go camping as a family, we camp. Sports,  
19 our children are involved in sports, of course, which we attend  
20 and, then, I knit and crochet.

21 Q. Any motorcycle bike riding?

22 A. No.

23 Q. All right, Mrs. --

24 A. Because we can't afford them, let's put it that way,  
25 not because we wouldn't like them.

1 Q And in your camping activities has there been any  
2 confrontation with any bikers' clubs being rude, impolite?

3 A No.

4 Q Now, Mrs. Kurt, you know yourself better than anyone  
5 else here in this courtroom and, in examining your own  
6 conscience do you know of any reasons why you should not be  
7 selected to sit as a juror in this case?

8 A No. As I told the Judge, the only thing that would  
9 really bother me was being out of my classroom and I realize  
10 somebody has to do it, so, a substitute would take care of my  
11 classroom, I know, even though I'd like to be there.

12 MR. ROBINSON: Pass Mrs. Kurt for cause, Your Honor.

13 THE COURT: All right. We will ask you to step back in  
14 the jury room and remain there, Mrs. Kurt, and ask you not to  
15 discuss the questioning with the other members of the panel.

16 Bring in Roland H. Sisk.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                               ROLAND H. SISK,  
2 a prospective juror herein, being first duly sworn, took the  
3 stand and testified as follows:  
4

5                               VOIR DIRE EXAMINATION

6 BY THE COURT:

7               Q     Mr. Sisk?

8               A     Um-hmm.

9               Q     I want to ask you a few questions, first, and then  
10 the attorneys will ask you a few. The Court Reporter here has  
11 to take down everything that's said, so you will need to answer  
12 any of the questions audibly and not just nod your head.

13              A     Okay.

14              Q     And try to answer loudly enough so he can hear you  
15 clearly.

16                    I just want to discuss with you first the way the  
17 jury will be handled, the procedure during the trial and see if  
18 this is going to cause some serious problems for you.

19                    Of course, none of us know at this time just exactly  
20 how long the trial will last. A reasonable estimate, probably,  
21 at this time, is three weeks.

22                    After the jury is completely selected and sworn to  
23 try the cause and we actually commence the trial, we'll do what  
24 we call sequester the jury; this means the jury will be housed  
25 at the motel, we've already made arrangements at the Stardust

1 Motel, take your meals at restaurants under supervision of the  
2 Bailiffs, wouldn't be able to go home at recess or evening until  
3 the trial is over.

4 A. Um-hmm.

5 Q Now, bearing that procedure in mind, is there  
6 anything in your personal life or home situation, your work  
7 situation, that would make this impossible for you to do, or  
8 create an extreme hardship? I phrase it in those terms because  
9 we know it's going to be inconvenient for everybody and we can't  
10 get a jury if we excuse people that just because of inconvenience.  
11 But, if there are some serious problems that you feel are  
12 extreme or --

13 A. Well, I don't have any kind of a -- what the jury  
14 pay, and that would -- it's really, for four weeks and really  
15 put me in a bind so far as the money goes.

16 Q. Who do you work for?

17 A. AS&R.

18 Q. And they don't have any kind of a program?

19 A. No, we turned -- lost that on our last negotiations,  
20 so we --

21 Q. I see.

22 A. -- negotiated it away. We don't have anything.

23 Q. Your job, as far as actual employment goes though,  
24 isn't threatened?

25 A. No, just probably, after the trial, might as well

1 go and file bankruptcy right along with it, I suppose.

2 Q What, as far as your financial obligation, how many  
3 dependents are you supporting?

4 A My wife and three kids.

5 Q Are your finances so close that they'll actually  
6 suffer while you are on jury service, or --

7 A Wouldn't do us any good with the regular payments  
8 paying like everything else.

9 Q Um-hmm.

10 A Payments, I don't know, wouldn't do me any good,  
11 really, take quite awhile to get straightened back around again.

12 Q You understand, if you do get on the jury you will  
13 get some fees for jury service, I'm sure that it would be a  
14 pittance compared to your regular salary.

15 A Right.

16 Q Well, I'm sorry you have to face that, but I'm  
17 afraid, if we excused everybody because of that kind of a  
18 hardship we probably wouldn't have any jurors, probably proceed  
19 with some of these other questions, then, Mr. Sisk.

20 A Okay.

21 Q I want to turn to a subject of our philosophy and  
22 system of law as far as the burden of proof in a criminal trial.  
23 Under our law a defendant in a criminal action is presumed to be  
24 innocent until his guilt is established beyond a reasonable  
25 doubt by the State. This means a defendant doesn't have to come

1 forward with any evidence or do anything to prove his innocence,  
2 the law gives him that cloak of innocence to begin with. The  
3 burden is on the State to go forward with the evidence and carry  
4 the full burden of proving him guilty beyond a reasonable doubt.

5 I'll give you further instructions to the jury,  
6 further instructions as the trial proceeds about the meaning of  
7 these terms. But, right now, what it means is that as  
8 Mr. Creech sits here today and at this stage of the proceeding  
9 before any evidence is presented he has to be considered innocent.

10 Are you able at this time to give him the benefit  
11 of this principle and consider him innocent?

12 A. Do you mean like even with what has been in the  
13 papers and that?

14 Q. Well, we'll get to that subject next, but do you  
15 have any quarrel with this principle of law?

16 A. No, no.

17 Q. In other words, as an abstract matter, in criminal  
18 cases generally you are willing to accept that principle?

19 A. Yes.

20 Q. And accept it fully, is that right?

21 A. Yes.

22 Q. All right. Let's turn to the specific case, then.  
23 You've already indicated you may have heard something about  
24 the case, or read something, is that right?

25 A. Yeah, what's been in the papers in the past.

1 Q Okay. Can you give me an idea of perhaps about  
2 the extent of your reading and how many different articles over  
3 what period of time you recalled reading this?

4 A Well, when they first brought him up it was in the  
5 paper, two months ago, and said that he had killed them and he  
6 admitted to some of the officers down there that he had and,  
7 then, going out and help find people.

8 Q And you -- these things stand out in your mind?  
9 You remember that?

10 A Yeah, if he admitted to them, I guess.

11 Q Now, when you say "them" what are you speaking of?

12 A Well, it said the arresting officers, or some of  
13 the other local officers that they arrested him, I guess is  
14 what the paper said.

15 Q What do you remember of the facts the paper said  
16 about? You said he admitted killing them or something. Who do  
17 you understand from the story "them" referred to?

18 A The people -- the two fellows that he's charged  
19 with.

20 Q The two fellows here in Idaho that he's charged  
21 with?

22 A Um-hmm, and, then, the same articles it was said  
23 that he was waiting to be tried in Oregon if he gets off here.

24 Q Okay. Do you have a recollection of any other  
25 articles or any other purported facts you've read or heard

1 about the case?

2 A. No.

3 Q. So, the stories you remember related facts about  
4 the alleged offense right here in Idaho and, then, you had some  
5 purported facts about something in Oregon; some charges in  
6 Oregon?

7 A. Well, as far as reading out of the paper, heard  
8 all kinds of rumors around here, though.

9 Q. Can you give us an idea about what some of those  
10 rumors are?

11 A. Well, I heard -- I can't remember exactly the  
12 times, probably six weeks ago or so, that he was supposed to  
13 have tried, attempted suicide.

14 Q. Anything else?

15 A. No, I guess that's about it right offhand that I  
16 can remember.

17 Q. All right. Bearing those things in mind that  
18 you've related to us and you do have a distinct memory of, have  
19 you formed an unqualified opinion as to the guilt or innocence  
20 of the defendant at this time; based on those things you've  
21 heard?

22 A. Well, I guess I'd say pretty much so.

23 Q. Would it require --

24 A. Probably take quite a bit to change it.

25 Q. Would it take -- would he have to come forward

1 with proof, testimony and evidence, to remove this from your  
2 mind?

3 A. I believe so.

4 THE COURT: All right. Counsel resist the challenge?

5 MR. ROBINSON: I'd stipulate, Your Honor.

6 MR. REMAKLUS: No, we don't.

7 THE COURT: All right, we'll excuse you, then,  
8 Mr. Sisk. We appreciate your frankness and your time you spent  
9 here. I'll ask you not to discuss the questioning here, what  
10 you've told us, with any of the other members of the panel if  
11 you happen to run into them.

12 THE WITNESS: Okay.

13 THE COURT: You will be subject to call on further  
14 cases. We don't have a specific appearance date, but the  
15 Jury Commissioner may call you for further service. But, we  
16 appreciate your appearance.

17 THE WITNESS: Thank you.

18 THE COURT: All right, I'm going to ask the Clerk to  
19 draw one name and reveal it to Counsel and, then, draw a second  
20 name under this outlined procedure and not reveal the second  
21 name at this time.

22 THE CLERK: Number 23, Ruth E. Daiker.

23 THE COURT: We'll have to take, again, a short recess,  
24 until we get additional jurors.

25 (Recess taken.)

1 THE COURT: Counsel ready to proceed?  
2 MR. ROBINSON: Yes, Your Honor.  
3 MR. THOMAS: We are, Your Honor.  
4 THE COURT: All right, bring in Ruth Daiker.

5  
6 RUTH E. DAIKER,  
7 a prospective juror herein, having been first duly sworn, took  
8 the stand and testified as follows:

9  
10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Is that the correct pronunciation, "Daiker"?

13 A Yes, that's correct.

14 Q I'm going to ask you a few questions first,  
15 Mrs. Daiker, and then the attorneys will want to ask you a few.  
16 The Court Reporter has to report all these proceedings so it  
17 will be necessary for you to answer audibly so that he can hear  
18 you and loudly enough so he can hear you, please.

19 I want to just discuss with you first the procedure  
20 we're going to follow with the jury after the trial starts and  
21 see if that is going to create a serious situation for you.

22 None of us know right now how long this trial will  
23 last. A reasonable estimate is, probably, about three weeks.

24 After the jury is completely selected and sworn to  
25 try the cause, the trial actually starts, we'll do what we call

1 sequester the jury; which means that the jurors will be housed  
2 at a motel, we've made arrangements at the Stardust, and meals  
3 will have to be taken in restaurants under supervision of the  
4 Bailiffs and jurors won't be able to be separated at this time  
5 and go home at the evening recess or any other recess.

6 We're wondering now, bearing this in mind, if  
7 there's anything in your personal life, your home situation or  
8 any work situation that would make this impossible for you to do,  
9 or create an extreme hardship for you. We recognize it's not  
10 going to be very convenient for any juror, but we can't just  
11 excuse for inconvenience because we couldn't get a jury if we  
12 did that.

13 But, if there are serious problems, or at least  
14 just an impossible situation for you to meet, we'd like to know  
15 right now what the problems are.

16 A. Well, I have an 11-year old boy, I don't know if  
17 he would create a problem or not.

18 Q. Do you have -- I'm sure you'd want some supervision  
19 for him.

20 A. My husband is retired.

21 Q. Is he able to take care of him? Is he in good  
22 health?

23 A. He isn't too well, but he could become sick at any  
24 time. He has arthritis and ulcers, both.

25 Q. I see. But, he doesn't work so he's there at home

1 during the day?

2 A. Yes.

3 Q. And does the boy go to school?

4 A. Yes.

5 Q. So, be primarily in the evenings, are they able to  
6 cook all right?

7 A. Yes, they don't like it, but they can.

8 Q. Do they have -- do you have other family in the  
9 vicinity if your husband became ill?

10 A. No, there is no one. I have two older boys in  
11 California.

12 Q. Do you have any close friends there, neighbors,  
13 that --

14 A. No.

15 Q. -- can help if --

16 A. Well, I hate to impose on neighbors. Seems like  
17 all my close friends and relatives are moving out of the  
18 district.

19 Q. I see. What is the possibility of illness on the  
20 part of your husband such as that he would actually have to be  
21 hospitalized or something like that; or isn't that likely?

22 A. I've been giving him a B-12 shot twice a week, but  
23 the neighbor lady could do that.

24 Q. She could do that? So, right now at least this is  
25 something that worries you, but it isn't, I take it, you don't

1 have anything to base a prediction what is likely to happen?

2 A. No, just --

3 Q I will tell you that, of course, you wouldn't be  
4 actually held in completely incommunicado. You obviously would  
5 not be able to get any information dealing with the case, you  
6 will be under oath not to discuss the case and receive any  
7 information, but that doesn't preclude you from sending messages  
8 out through the Bailiffs about personal matters and checking  
9 with your family and see how things are going and things like  
10 that; to relieve your mind, you see?

11 A. Um-hmm.

12 Q Well, I think probably we'll have to accept that  
13 problem and try to work with it.

14 I want to turn to a different subject, then,  
15 Mrs. Daiker. Under our philosophy of law and system of justice  
16 a defendant in a criminal action is presumed to be innocent  
17 until his guilt is established beyond a reasonable doubt by the  
18 State and instructions in the course of the trial I'll explain  
19 these terms more fully. But, for the purposes at this stage of  
20 the trial and this stage of the proceeding, what this means is  
21 that the defendant must be considered to be innocent right at  
22 this stage of the proceeding without any evidence having been  
23 presented or anything. It means that he doesn't have to come  
24 forward with any proof of his innocence or prove his innocence;  
25 that the entire burden is on the State to prove him guilty

1 beyond a reasonable doubt.

2 I'm wondering whether you are able at this time to  
3 give Mr. Creech the full benefit of this principle and  
4 consider him to be innocent at this stage of the proceeding?

5 A. I think so.

6 Q. At least you don't have any quarrel with that  
7 general philosophy and principle of law?

8 A. No.

9 Q. You would accept the principle?

10 A. Yes.

11 Q. All right. Well, let me get to the next subject  
12 to see if there's anything that would create a problem as to  
13 this specific case.

14 Have you heard or read anything about this case in  
15 the newspapers or on radio or TV?

16 A. No, I did see the headlines that it was being  
17 transferred to this county.

18 Q. That was, what, a month or so ago?

19 A. Yeah, about.

20 Q. Do you have any present memory of any purported  
21 facts you read in that story or saw in that story or --

22 A. I didn't read the story. I just, you know, I don't  
23 particularly feel that criminal cases is good reading.

24 Q. I see. You, as you sit here today, do you have any  
25 memory of any purported facts that you've heard from any source

1 about the case, other than the fact that it was transferred here  
2 for trial?

3 A. Well, other than what you said to that there.

4 Q. And what you heard in court?

5 A. Yes.

6 Q. That's all you know about the case?

7 A. Yes.

8 Q. I want to turn to another subject that I think  
9 jurors may not be aware of, and it comes, sometimes, as sort of  
10 a shock to them. But, under our Idaho law, neither the jury  
11 nor the Judge has any discretion as to the penalty to be  
12 imposed as to a defendant convicted of First Degree Murder.  
13 The legislature has made that determination and taken it  
14 completely out of the hands of the jury and the Judge.

15 The legislature has made the death penalty mandatory  
16 for First Degree Murder. Now, knowing this to be the law, do  
17 you have any personal beliefs or feelings about the death  
18 penalty which would prevent you from fairly considering the  
19 evidence and law bearing on the charge of First Degree Murder?

20 A. No.

21 Q. Under our law it's the function of the jury to try  
22 the facts and the duty of the Judge to explain the law to the  
23 jury and instructions. Sometimes I think jurors find that the  
24 law is different than they thought it was, or perhaps they even  
25 find principles of law they don't personally agree with.

1 Do you know of any reason why you couldn't fully  
2 accept the instructions as to the law from the Court in this  
3 case?

4 A. No.

5 Q. Do you know of anything that would prevent you from  
6 being a fair and impartial juror to both sides in this case?

7 A. I don't think so.

8 THE COURT: Counsel may inquire.

9 MR. THOMAS: Thank you, Your Honor.

10  
11 VOIR DIRE EXAMINATION

12 BY MR. THOMAS:

13 Q. Mrs. Daiker, if you felt that the evidence that  
14 you heard as a juror in this case proved First Degree Murder  
15 beyond a reasonable doubt in your mind, you feel that you could  
16 vote to convict; even though the death penalty was mandatory?

17 A. Yes.

18 Q. Would you be willing and able to concentrate on  
19 whether the evidence shows guilt or innocence and not consider  
20 the penalty as you hear the evidence in the case?

21 A. Yes.

22 Q. You understand, don't you, that the function of  
23 the jury is not to consider the penalty in a case of this kind?

24 A. No.

25 Q. Only to determine guilt or innocence. You agree

1 with that?

2 A. Yes.

3 Q Do you feel that if you were seated as a juror in  
4 this case that you could give the State, as well as the  
5 defendant, a fair trial?

6 A. Yes.

7 Q Do you watch any programs on television, Mrs. Daiker,  
8 in which courtroom scenes are dramatized or lawyers are  
9 portrayed, in your regular business?

10 A. Don't we all?

11 Q I take it you do, then?

12 A. Yes.

13 Q Would you be disappointed if things don't work  
14 here the same way they do on television?

15 A. Well, I'm sure they are not as flamboyant as they  
16 are on television.

17 Q And you understand that the procedures are  
18 dramatized on television and things may not go the same way  
19 here?

20 A. Yes.

21 Q Do you -- that wouldn't affect your judgment,  
22 would it, in the case?

23 A. No.

24 Q Have you read any recent books or articles about  
25 law or lawyers?

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A. No.

Q. Have you read any recent articles or books about famous trials?

A. Yes.

Q. What have you read?

A. Helter Skelter.

Q. Did you get any impression about how trials are supposed to work from that book?

A. No, but I felt sorry for the jury being locked up for so long.

Q. Did you feel, after reading that book, that you might be influenced in any way by it in this case?

A. I don't think so.

Q. You understand, do you not, Mrs. Daiker, that the jurors are the judges of the credibility, or the believability of the witnesses who might testify in this case? Do you understand that?

A. Yes.

Q. Do you feel that you would have any problems in judging whom to believe?

A. I don't think so.

Q. The Court has mentioned the reasonable doubt standard and I think that the Court will instruct at a later time in the trial that a reasonable doubt means just that; a doubt that is reasonable and not an imaginary or fanciful doubt

1 of the kind that just about anybody could conjure up about  
2 anything with enough talking. As a juror it would be up to you  
3 to determine whether or not you are certain in your mind that  
4 the defendant is guilty; that is, whether the charges have been  
5 proved beyond a reasonable doubt.

6 Do you feel any confusion in your mind about the  
7 difference between a reasonable doubt and an imaginary doubt,  
8 or fanciful doubt?

9 A. I don't think so.

10 Q. I don't wish to pry unduly into your personal  
11 affairs, Mrs. Daiker, I hope you will bear with me because we  
12 do have a duty to get some background information and I have  
13 just a few questions in that line to ask you.

14 Could you tell me, first of all, where were you  
15 born?

16 A. I was born in Shoshone County.

17 Q. And have you lived here all of your life?

18 A. Yeah, I lived in Portland, Oregon for about ten  
19 months during the war.

20 Q. I see. What is your educational background?

21 A. High school graduate.

22 Q. And let me ask you about your religious preference.

23 A. Catholic.

24 Q. And do you attend church regularly?

25 A. Yes.

1 Q You have a couple of children that are grown, as  
2 I understand it; is that correct?  
3 A Yes.  
4 Q What are their occupations?  
5 A The oldest one is an electrical engineer.  
6 Q Does he live here?  
7 A He lives in California.  
8 Q I see. And the other one that's grown, what does  
9 he do?  
10 A He's working nights, I think, for a bank preparing  
11 statements.  
12 Q I see.  
13 A He's a high school graduate and he had two years  
14 of junior college.  
15 Q Is he from this area?  
16 A He was born here.  
17 Q Um-hmm. And where does he live now?  
18 A He lives in Huntington Beach, California.  
19 Q I see. Do you know any of the attorneys in this  
20 case, Mrs. Daiker?  
21 A No, I don't.  
22 Q Do you have any close friends or relatives who are  
23 acquainted with any of the attorneys who are appearing in this  
24 case?  
25 A No.

1 Q Have you or any of your close friends or relatives  
2 had any legal troubles such as criminal or civil lawsuits, been  
3 involved in any of those things?

4 A No.

5 Q Have you ever been a witness in a criminal case?

6 A No.

7 Q And have you had any jury experience before this  
8 experience?

9 A No.

10 Q Do you do any volunteer work of any kind,  
11 Mrs. Daiker?

12 A I don't -- not really.

13 Q Um-hmm. If the evidence in this case you were to  
14 hear, it turned out that the victims, people who were killed,  
15 were not nice people, in fact, rather repelling people; would  
16 that tend to make you believe that murder was justified?

17 A No.

18 Q Have you ever discussed this case with anyone  
19 who thought the defendant was either guilty or not guilty?

20 A No.

21 MR. THOMAS: Thank you, Mrs. Daiker; pass this juror  
22 for cause.

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mrs. Daiker, I too apologize for questions that we must ask you, to delve into your private life, but we do have a duty to assist in selecting an unbiased, unprejudiced jury and I hope you take my questions, also, in that light. You understand that, do you?

A. Yes.

Q All right. Now, in your affiliation with the Catholic Church, may I ask you personally do you have -- believe in God?

A. Yes.

Q Do you believe that Satan exists?

A. Yes.

Q Have you, in your contact socially or otherwise through the church, heard any conversations having to do with supposed witchcraft practice here in Shoshone County area?

A. No.

Q Now, when Mr. Thomas asked you about involvement in lawsuits, I notice on your questionnaire that there, apparently, was an automobile accident involving some personal injuries?

A. Yes.

Q Was that injury to yourself?

A. No, it was two parties on a motorcycle. I was

1 driving the car and I made a left turn. I did not see him  
2 because the highway wasn't visible.

3 Q Um-hmm.

4 A And popped up over the railroad track and, as I  
5 was in his path, he hit the side of our car doing slight  
6 damage to it and he crushed his right foot.

7 Q That was resulting in a lawsuit?

8 A Yes, he didn't have insurance so he sued us, but  
9 it was settled out of court by our insurance company.

10 Q All right. Now, have you, yourself, any members  
11 of your family, close relatives or friends ever been victims  
12 of crimes?

13 A Not to my knowledge.

14 Q And have you had any contact with people who do  
15 use drugs?

16 A No.

17 Q Do you have a particular prejudice against those  
18 who do use drugs?

19 A Yes.

20 Q If it develops in this case that the defendant  
21 himself uses drugs would this tend to prejudice you against  
22 him for -- merely for the reason that he does use drugs?

23 A I think it would.

24 Q Would that prejudice work in your mind upon that  
25 fact being admitted; that more than likely the defendant was

1 guilty of the crime charged here?

2 A. Do you -- how do you want that answered, "yes" or  
3 "no"?

4 Q. Only how you want to answer it.

5 A. Well, I would feel that he wouldn't have full use  
6 of his facilities, mental thoughts, and he would -- he wouldn't  
7 be aware what he was doing.

8 Q. All right. Now, Mrs. Daiker, you mentioned this  
9 book you read, Helter Skelter. That's the Charlie Manson  
10 family account; is that correct?

11 A. It was written by the attorney -- I can't remember  
12 his name, it's different.

13 Q. That represented Manson?

14 A. No, he was the Prosecuting Attorney.

15 Q. The Prosecuting Attorney? At what -- what effect  
16 did that book leave upon you in your --

17 A. I was scared to go out camping seeing all these  
18 along the highway, hitchhikers.

19 Q. And there are plenty of them; are there not?

20 A. Yeah.

21 Q. Even in this area?

22 A. Um-hmm.

23 Q. Have you ever had any encounter with any bikers or  
24 commune livers?

25 A. No.

1 Q. Never been mistreated by any group of this nature?

2 A. No.

3 Q. Did the circumstances as they were reported and  
4 repeated in the book Helter Skelter appall you?

5 A. Yes.

6 Q. And do you believe that the way -- or the effect  
7 that that book had upon you possibly would drift over into this  
8 case if you found that there were some similarities in regards  
9 to commune living and drugs?

10 A. Yes.

11 Q. Do you feel that possibly there would be a  
12 necessity of the defendant having to come forward with evidence  
13 in order to take away a "stimula" that you have on these  
14 prejudices in order to put on more proof to his innocence?

15 In other words, would we have to come forward with  
16 evidence to overcome your prejudices?

17 A. No, I don't think so.

18 Q. Now, in answer to Judge Durtschi's questions about  
19 this presumption of innocence at this particular point, you are  
20 free of any prejudice and you do believe in the maxim of law  
21 that a person is presumed innocent until proven guilty beyond  
22 a reasonable doubt; is that correct?

23 A. Yes.

24 Q. All right. Now, if in the evidence of this case  
25 it develops that Mr. Creech does use drugs and that he has

1 lived in circumstances amounting to commune living, that you  
2 stated would somewhat prejudice you, would that information  
3 also prejudice you that he more than likely committed the  
4 crime that he's charged with?

5 A. Yes.

6 MR. ROBINSON: We challenge for cause, Your Honor.

7 THE COURT: Want to resist the challenge?

8 MR. THOMAS: Yes, Your Honor.

9 THE COURT: Want to ask some further questions?

10 MR. THOMAS: If we may.

11 THE COURT: Yes.

12  
13 FURTHER VOIR DIRE EXAMINATION

14 BY MR. THOMAS:

15 Q Mrs. Daiker, do you feel that you could approach  
16 this case with an open mind and listen to all of the evidence  
17 before you make up your mind about whether the defendant is  
18 guilty or not?

19 A. Yes.

20 Q Would your feelings about drugs or your feelings  
21 about people living in circumstances that you don't approve of,  
22 would that automatically cause you to think a person was  
23 guilty of First Degree Murder?

24 A. No.

25 MR. THOMAS: I don't think the defense counsel has

1 shown cause, Your Honor, and we resist the challenge.

2 THE COURT: Do you want to ask further questions,  
3 Mr. Robinson?

4 Let me just ask you a couple more questions,  
5 Mrs. Daiker.

6 Counsel has asked you hypothetical questions, in  
7 terms of if certain facts were shown. Of course, I would  
8 expect that any evidence that comes into this case at all will  
9 have to be relevant to some part of the proof or it wouldn't  
10 get into the case. But, you understand the fact that some of  
11 these factors that counsel has talked about may come into the  
12 case doesn't change the nature of the charge. The charge isn't  
13 a drug charge or any charge that might grow out of commune  
14 living. The charge simply means First Degree Murder.

15 Would the fact that some evidence about the  
16 background of the defendant and his manner in living and habits  
17 were what you personally disapprove of, would that cause you  
18 in and of itself to lessen the burden that we've stated is on  
19 the State to prove him guilty of First Degree Murder beyond a  
20 reasonable doubt? Would you just say that because of that fact  
21 alone you are going to find him guilty of murder?

22 THE WITNESS: No.

23 THE COURT: Would you still require the State  
24 ultimately to prove him guilty of the charge beyond a reasonable  
25 doubt?

1 THE WITNESS: Yes.

2 THE COURT: Well, I'm going to deny the challenge.  
3 You can ask further questions if you want to.

4  
5 FURTHER VOIR DIRE EXAMINATION

6 BY MR. ROBINSON:

7 Q Now, Mrs. Daiker, after the questions asked to  
8 you by Mr. Thomas and, then, by Judge Durtschi, I'm able to  
9 grasp more fully from your answers that you do not have a  
10 prejudice in your own mind merely because there may be  
11 testimony that admits that Mr. Creech does use drugs and has  
12 lived in communal living; is that correct?

13 A Yes.

14 Q All right. Now that I understand what  
15 Judge Durtschi elicited from you from an answer, you still  
16 would require, then, the State to prove the specific charge  
17 against Mr. Creech beyond a reasonable doubt?

18 A Yes.

19 Q All right. I didn't go as far, probably, as I  
20 should have and, maybe, I would have discovered that.

21 Now, Mrs. Daiker, you know yourself better than  
22 anyone else here in this courtroom, you know your mental and  
23 physical make-up, your personality.

24 Other than the questions that have been asked to  
25 you, can you think of any reason why you should not be selected

1 as a juror to hear this case?

2 A. No.

3 Q. You feel that you would be a fair and impartial,  
4 unbiased and non-prejudiced juror?

5 A. I would try to be fair.

6 MR. ROBINSON: We pass for cause, then, Your Honor.

7 THE COURT: Mrs. Daiker, if you just want to take a  
8 seat down in the jury box for a minute I'm going to bring the  
9 other members of the panel to the jury room.

10 Wait a minute, Mrs. Dumont, could I see you just  
11 a minute.

12 (Whereupon the 12 prospective jurors entered the  
13 courtroom.)

14 THE COURT: I'm going to seat -- if you'd just, maybe,  
15 come this side of the rail here, I want to seat you in the  
16 order now in which -- maybe just line up here.

17 Counsel, as I understood the procedure, we agreed  
18 on at the pretrial conference, maybe this will be a little  
19 different, you may have something to say about the seating  
20 arrangement I -- since we haven't actually drawn jurors to  
21 fill specific seats I'm going to fill the box in the order in  
22 which the jurors have been passed for cause and I think this  
23 will give you a chance to rearrange your charts if they are  
24 different than we have.

25 I'm going to begin -- we're going to shuffle you

1 around a little here for a minute beginning back on -- as  
2 Seat No. 1, back in the corner, Mrs. Gregory, if you'd take  
3 that seat, Mrs. Claypool next to her, Seat No. 2, Mrs. Powell,  
4 Seat No. 3 -- Mr. Powell, excuse me, Mr. Powell, Seat No. 3  
5 next to Mrs. Claypool. Mr. Luoma, Seat No. 4, Mr. Sibert,  
6 Seat No. 5, Mrs. Kienholtz, Seat No. 6.

7 Then, starting again on the front row,  
8 Mrs. Jaeger, Seat No. 7, Mrs. Orsburn, Seat No. 8, Mrs. Bennett,  
9 Seat No. 9, Mrs. Stinson, Seat No. 10, Mrs. Kurt, Seat No. 11  
10 and, then, Mrs. Daiker, Seat No. 12. Be seated.

11 Now, you 12 jurors have been passed for cause and  
12 actually you are now seated in the box. We still have the  
13 pre-emptory challenges to exercise. As I've explained to you  
14 over in the other courtroom, each side has ten pre-emptory  
15 challenges where they can challenge jurors by just writing  
16 names on slips of paper and handing them in and the juror is  
17 automatically excused. So, we still don't have the selection  
18 of the jury completed by quite a ways. We still have quite  
19 a ways to go, but we did want to get you in the seats that  
20 you would occupy unless you are challenged for cause and I  
21 want to just repeat the admonition I gave you in court yesterday  
22 morning and last evening when we took a recess.

23 Please don't discuss this case among yourselves  
24 or with any other person and don't read any newspaper articles  
25 or listen to any news reports or radio or TV while you still

1 have the possibility of serving as trial jurors in this cause.

2 So, if you will please abide by that admonition  
3 and return here to this jury room after our noon recess. We'll  
4 be in recess until 1:30, but will you remember, in case you  
5 are seated as final jurors which seats you now occupy because  
6 we'll ask you to take those same seats again if you are finally  
7 selected to serve.

8 We'll keep track if you have any questions, we  
9 can remind you. We'll take our noon recess, then, until  
10 1:30 and please abide by the admonition I've given you.

11 (Noon recess taken.)  
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1 WALLACE, IDAHO, TUESDAY, OCTOBER 7, 1975, 1:30 P.M.

2  
3  
4 THE COURT: Counsel ready to proceed?

5 MR. ROBINSON: Yes, Your Honor.

6 MR. REMAKLUS: Yes, Your Honor.

7 THE COURT: All right. I'll advise Counsel that the  
8 stand-by name we had drawn before our noon recess was number  
9 37, Duane M. Hammond. I'll have the Clerk draw another  
10 stand-by name at this time.

11 State's first pre-emptory.

12 MR. REMAKLUS: Again, Your Honor, I'd like the ground  
13 rules on the pre-emptories, maybe it should be done in the  
14 absence of the prospective jurors.

15 THE COURT: Well, all right. Do you want to go back  
16 in there until we need you, Mr. Hammond.

17 MR. REMAKLUS: We have 12 jurors, was he the first  
18 one that would be --

19 THE COURT: Yes.

20 MR. REMAKLUS: In the event the pre-emptory was  
21 exercised -- in the event that during the course of the  
22 afternoon if the State waives a pre-emptory, then do we still  
23 have all of our pre-emptories left except the one that was  
24 waived; or are you going to limit us then to only challenging  
25 jurors that have been called to replace jurors that have been

1 challenged by Mr. Robinson?

2 THE COURT: Well, I used to feel that once you did  
3 waive a challenge that your challenge, pre-emptory thereafter  
4 were limited to new jurors that were drawn after that. But,  
5 the new civil rules have adopted a different procedure for  
6 civil cases and, as far as I'm concerned, I'm willing to  
7 follow that for criminal cases unless you have any objection.

8 MR. ROBINSON: No, I adhere to the new civil rule,  
9 I feel it's --

10 THE COURT: The new civil rule lets you challenge  
11 anybody that's been passed for cause; even though you've  
12 waived. Of course, you lose the challenge you waive.

13 MR. REMAKLUS: Yes, I understand that.

14 Thank you.

15 THE COURT: All right, it will be the State's first  
16 pre-emptory.

17 All right, if you will bring Mr. Hammond in,  
18 please.

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DUANE M. HAMMOND,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Mr. Hammond, I guess we're ready for you now.  
I'm going to ask you a few questions first,  
Mr. Hammond, and, then, the attorneys will want to ask you  
some questions. Everything that transpires here has to be  
reported by the Court Reporter so you'll have to answer  
audibly so he can hear you and loudly enough so he can hear  
you if you do that please.

A. Okay.

Q. I want to visit with you first about how we're  
going to handle the jury during the trial and see if that is  
going to cause any impossible situations for you.

Right now, of course, we don't know how long the  
trial will last. A reasonable estimate is, probably, three  
weeks.

Now, once the selection of the jury has been  
completed and we have a jury picked and sworn to try the  
cause and we actually start the trial, then we're going to  
do what we call sequester the jury; this means that the jurors  
will be housed in a motel, we have arrangements at the Stardust,

1 and take your meals at a restaurant under the supervision of  
2 the Bailiffs and we just won't be able to go home during  
3 recesses or in the evenings until the trial is over. You  
4 understand that?

5 A. Yes.

6 Q. Now, we're wondering if there's anything in your  
7 personal life, your home situation, your work, that would  
8 make this impossible for you to do or create an extreme  
9 hardship. We know it will be inconvenient so we -- it will  
10 be inconvenient for all the jurors so we don't phrase it in  
11 the terms of inconvenience. So, we wonder if there's any  
12 special situation you are facing, or just creates a real  
13 problem for you.

14 A. Frankly, it will, sir. I was sick last fall and  
15 I got some bills and -- I'm in debt, in other words. I've  
16 got three boys and I work the afternoon shift and the only  
17 time they see me is when they wake me up before they went to  
18 school and that was a hardship for them.

19 Q. Now, is their mother home with them?

20 A. Yes.

21 Q. Does she work?

22 A. No.

23 Q. So, she'll be with them?

24 A. Right, I've got two boys in school and one not.

25 Q. I see. Have you been put under any threat of

1        losing your job or are you just talking about the loss in  
2        wages?

3            A.     I wouldn't get reimbursed for my wages at all.

4            Q.     I see. Who do you work for?

5            A.     I work for ASARCO. As it is now, I'm losing  
6        \$35 a day, that's \$70 for two days, yesterday and today, and  
7        I, financially, can't.

8            Q.     As I say, we're going to have a hard time finding  
9        any jurors who wouldn't lose financially. Unless you have a  
10       special situation, you say you do have a lot of debts because  
11       of illness?

12          A.     Right.

13          Q.     How long were you ill?

14          A.     I was off three months with hepatitis and I have  
15       a very bad liver.

16          Q.     Is that just recently?

17          A.     Well, just a year ago.

18          Q.     You haven't caught up yet?

19          A.     Right.

20          Q.     Do you have a lot of doctor and hospital bills  
21       that you are still owing from that illness?

22          A.     Right, yes.

23          Q.     I take it the -- will your family get any kind  
24       of a paycheck if you were serving on this jury?

25          A.     None whatsoever.

1 Q Do you have one still coming for past work?  
2 A I have one for last week.  
3 Q That would be the only thing they'd have?  
4 A Right. I work six days a week, I'm a mechanic.  
5 Q Um-hmm. Would they -- well, most of this be taken  
6 by debts, or would they be able to use it for living expenses?  
7 A Would have to use it for living expenses, couldn't  
8 pay no bills. I'm buying my own home and I'd lose that.  
9 Q Do you think this concern about this would  
10 interfere with your concentrating on the evidence and paying  
11 attention or --  
12 A I believe so.  
13 Q -- so upsetting to you -- it would, really,  
14 interfere with your attention to the case?  
15 A I believe so. If I got reimbursed, it wouldn't  
16 bother me. But, being I don't get reimbursed from my company,  
17 it really shakes me up.  
18 MR. ROBINSON: I'd stipulate, Your Honor.  
19 MR. REMAKLUS: We have no objection.  
20 THE COURT: All right, Mr. Hammond, we'll excuse you,  
21 then.  
22 THE WITNESS: I appreciate it.  
23 THE COURT: We appreciate your situation. We'll ask  
24 you, if you run into any of the other panel members not to  
25 discuss the questioning here with them and you will still be

1 subject to call on other trials if you are needed. The  
2 Jury Commissioner will get in touch with you.

3 THE WITNESS: I appreciate it.

4 THE COURT: The next stand-by juror we have is number  
5 63, Stella M. Koole.

6 I'll direct the Clerk to draw another stand-by  
7 juror.

8  
9 STELLA M. KOOLE,  
10 a prospective juror herein, having been first duly sworn, took  
11 the stand and testified as follows:

12  
13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q Mrs. Koole?

16 A Yes, sir.

17 Q I'm going to ask you a few questions first,  
18 Mrs. Kooke, and then the attorneys will want to ask you a  
19 few. Everything we say here has to be reported by the  
20 Court Reporter so -- sitting right here (indicating) -- so  
21 you'll need to speak loudly enough and audibly for him to  
22 hear, okay?

23 A Okay.

24 Q I want to just discuss with you a few minutes  
25 first about procedure we're going to use with the jury once

1 the trial starts to see if this is going to cause any real  
2 hardship or any problem for you.

3 None of us know for sure how long this trial will  
4 last right now. But, our best estimate is three weeks.

5 Now, once the selection of the jury has been  
6 all completed and we have a jury sworn and actually starting  
7 testimony and start the trial, then the jurors will be housed  
8 in a motel, we have arrangements at the Stardust Motel; that  
9 the jurors will take their meals at restaurants under the  
10 supervision of the Bailiffs and the jurors will be unable to  
11 go home during recesses or evening until the trial is over.  
12 You understand that procedure?

13 A. Yes, sir.

14 Q Now, we need to know right off, at first, whether  
15 there's anything in your personal life or home situation,  
16 work situation, whatever, that would make it impossible for  
17 you to do this, or create an extreme hardship. We know it  
18 will be inconvenient, we start off with that assumption.  
19 But, we need to know whether there's anything particularly  
20 in your situation that would just be a real serious problem  
21 for you?

22 A. No, sir, I've got a babysitter and my husband  
23 works straight days.

24 Q So, you feel you can handle the situation all  
25 right so far as that is concerned?

1 A. If I have to,

2 Q. Fine.

3 Move onto another area, then. Under our  
4 philosophy and system of criminal justice, Mrs. Koole, the  
5 defendant in a criminal action is presumed to be innocent  
6 until his guilt is established beyond a reasonable doubt.

7 Now, later on in the trial you will be given  
8 further instructions to explain the meaning of these terms,  
9 but right now what this means is that the State has to go  
10 forward with the evidence and prove guilt beyond a reasonable  
11 doubt. The defendant doesn't have to do anything to prove  
12 his innocence, that's our philosophy and system of justice.

13 What this means right at this stage of the  
14 trial, before any evidence has been received or presented is  
15 that the defendant here, Mr. Creech, has to be considered  
16 innocent. Now, are you able at this time to give him the  
17 benefit of this principle and consider him innocent at this  
18 time?

19 A. Yes, sir.

20 Q. Have you read or heard anything about this case  
21 in newspapers or radio or TV or from any other source?

22 A. What was in the paper the first thing when they  
23 said the motels were full. I have some kind of vision -- I  
24 can't see things close up so I haven't been able to read for  
25 some time, not unless it's real big print. I've got glasses

1 on order but I don't know if I'm going to be able to pick them  
2 up or not.

3 Q You don't have them yet?

4 A No, it's just makes things look closer to me than  
5 they really are. So far it hasn't impaired my driving in any  
6 extent.

7 Q You can drive?

8 A Yes, sir.

9 Q Have you -- you do have the glasses on order?

10 A Yes, they are supposed to be here -- he said  
11 "ten days, or two weeks". It was a week today since I had  
12 the examination. They should be here in another week or less.

13 Q Well, I'm sure, if you were on the jury you could  
14 probably make some arrangements to get those picked up and  
15 delivered to you.

16 A That would make things look a little better to  
17 me. Everything wouldn't look like right in front of me.

18 Q Is your distant vision all right if things get a  
19 little ways away from you?

20 A Um-hmm. I can read, it's just that it bothers  
21 me to have to hold a little print way out.

22 Q In other words, you can actually read, but you  
23 have to hold things quite a ways away; is that it? Put them  
24 in focus?

25 A Didn't think anything was wrong because I

1       could read the road signs real good.

2               Q     But, you have those glasses available before --  
3       within another week?

4               A     Within another week because he said "ten days or  
5       two weeks". A week is up today.

6               Q     So, the only thing you actually remember at this  
7       time reading, or hearing about the case is, what, about --

8               A     That the motels are being filled.

9               Q     Do you remember right now having heard from any  
10      other person or read or received any information that purported  
11      to be facts, actual facts about this case; the case itself?

12              A     Nope.

13              Q     You say no?

14              A     No, I haven't.

15              Q     I might just ask you one more question. I think  
16      we can solve this by getting your glasses here some way when  
17      they come, but there undoubtedly will be a lot of evidence in  
18      this case, Mrs. Koole, including, probably, documents to be  
19      read by the jurors with ordinary print and photographs to look  
20      at and things like that. It sounded like before the trial is  
21      actually over you'll actually have your glasses and wouldn't  
22      have any problem with that, but --

23              A     I can read.

24              Q     -- in the event you couldn't get your glasses,  
25      could you still read documents and look at photographs?

1           A.    I brought a book with me and brought a puzzle just  
2    -- I turn it --

3           Q    Just unfortunate problem, I believe.

4           A.    -- sideways. I can read, but I don't like to.

5           Q    All right. I want to turn to a different subject,  
6    then. I think this, perhaps, comes as a somewhat of a surprise  
7    to a lot of jurors.

8                   Under our Idaho law, neither the jury nor the  
9    Court nor Judge has any discretion as to the penalty to be  
10   imposed for First Degree Murder. The legislature has made that  
11   decision and passed a law that takes away from the jury and  
12   the Judge to make any decision in this regard. The legislature  
13   has provided that the death penalty is mandatory in Idaho for  
14   First Degree Murder.

15                  Now, I'm wondering whether knowing this to be the  
16   law you have any personal beliefs or feelings about the death  
17   penalty which would just prevent you from fairly considering  
18   the evidence involved bearing on the charge of First Degree  
19   Murder?

20           A.    No, not really. I don't know whether it's good  
21   or bad, but I -- it wouldn't interfere.

22           Q    It wouldn't interfere with your judging guilt  
23   or innocence?

24           A.    No, not in my judgment.

25           Q    Under our law the jurors are the judges of the

1 facts and the Court will instruct you on the law. Occasionally  
2 I think jurors find the law is different than they thought it  
3 was, or, perhaps sometimes they think the law is bad the way  
4 the Court gives it to them.

5 Is there anything that would prevent you, however,  
6 from accepting the law as the Court instructs you on it?  
7 Would you be willing to accept my instructions on the law?

8 A. Yes, sir. I'm pretty good at taking orders.

9 Q. Do you know of anything else that I haven't  
10 mentioned that would prevent you from being fair and impartial  
11 to both sides in this case?

12 A. No.

13 THE COURT: Counsel may inquire.

14  
15 VOIR DIRE EXAMINATION

16 BY MR. REMAKLUS:

17 Q. I see you have five children and just one small  
18 one at home, is that right?

19 A. Yes, sir.

20 Q. What is the age of your oldest child?

21 A. He's 29 -- no, 30, he had a birthday.

22 Q. What does he do?

23 A. I have no idea. I haven't seen him in six years.  
24 He's in California someplace.

25 Q. And what are your other children, four others,

1 where are they?

2 A Well, I have a stepdaughter in Smelterville. In  
3 fact, they both live in Smelterville. They are divorcees and  
4 one works and the other lives on the County.

5 Q Um-hmm.

6 A I have my own daughter, my oldest daughter is in  
7 Germany, her husband is in the Air Force and my other daughter  
8 also lives in Smelterville. Her husband works for Bunker Hill.

9 Q Have any of your family been in trouble with the  
10 law, Mrs. Koole?

11 A Not that I know of.

12 Q Um-hmm. Any of your close friends or area  
13 acquaintances that you know of been in trouble?

14 A Traffic tickets, nothing else that I know of.

15 Q How long has Mr. Koole worked with Bunker Hill?

16 A Since he was 16 and he's 51 now.

17 Q He has a position of some responsibility; doesn't  
18 he?

19 A He's a supervisor.

20 Q You folks have a religious preference?

21 A I'm LDS and he doesn't care.

22 Q Are you active? Do you attend regularly?

23 A (No audible response.)

24 Q You and your husband have any hobbies, work around  
25 the house?

1           A.    I like to paint and small art things I like to work  
2 on building things, you know, little things.

3           Q.    Um-hmm, do you hunt and fish and do anything like  
4 that?

5           A.    When we can.

6           Q.    Um-hmm. Do you subscribe to a daily paper?

7           A.    Yes.

8           Q.    Which papers do you get?

9           A.    Kellogg Evening News.

10          Q.    Do you take any magazines through the mail?

11          A.    We take Argosy and I take a magazine called  
12 Faith and there's some "junk mail" they send us.

13          Q.    Um-hmm. You folks, do you watch television?

14          A.    Um-hmm. When it's working.

15          Q.    Have you seen some of these lawyer shows on the  
16 television recently?

17          A.    Yes, and they are nothing like this.

18          Q.    So, you don't expect -- you wouldn't expect this  
19 proceeding to be like some of those you've seen on the television?

20          A.    No. I know they are far out.

21          Q.    Okay, fine. I assume that you are not acquainted  
22 with any of the attorneys here?

23          A.    I don't know anybody.

24          Q.    Um-hmm. If you are selected here as a juror and  
25 you retire to consider the evidence, to decide in your own

1 mind whether or not the defendant is guilty, are you going to  
2 have any trouble with knowing that the death penalty is hanging  
3 there in case you say he's guilty?

4 A. Well, I think it would probably bother me. I  
5 wouldn't like the idea, but I believe in justice.

6 Q. Would it prevent you from making up your mind  
7 based on the evidence?

8 A. No, sir.

9 Q. Are you pretty sure in your own mind that you could  
10 face that burden?

11 A. I'm -- I've had to face a few problems, not  
12 exactly like this, but they were pretty hard to decide on and  
13 I decided on what was -- obviously nothing to do with a  
14 legal matter, but it was things that were important to me and  
15 I still used the things that was there for me to look at.

16 Q. So, you really think that you can make decisions,  
17 then, had some experience in it?

18 A. Um-hmm.

19 Q. I'm sure we all have.

20 Is your health pretty good?

21 A. Yes, sir.

22 Q. I was wondering, can you see what I'm holding up?

23 A. A pen, it looks like a fountain pen.

24 Q. Yeah. You don't think you'd have any trouble  
25 seeing the Exhibits and things like that even before your glasses

1 get here?

2 A No. Like I said, little print, I hold it kind of  
3 sideways because it's my right eye that makes things look  
4 closer than they are.

5 MR. REMAKLUS: Um-hmm. We will pass the juror for  
6 cause.

7 Thank you, Mrs. Koole.

8

9 VOIR DIRE EXAMINATION

10 BY MR. ROBINSON:

11 Q Mrs. Koole, I'd, like the others been asking you  
12 some questions and none of us intend to pry into your private  
13 life but we need to ask these questions to the extent that we  
14 can do our job and that is to select an unbiased, unprejudiced  
15 jury. You understand that; do you not?

16 A Yes, sir.

17 Q Now, you did state that you are affiliated with  
18 the LDS Church?

19 A Yes, sir.

20 Q And do you believe in God yourself?

21 A Yes, sir.

22 Q Do you believe that Satan exists?

23 A Well, I believe something exists. I'm not  
24 prepared to put a name to it, either one, for the matter of that.

25 Q All right. And in conversations and your social

1 life and discussions that you've had, have you heard any  
2 reference about witchcraft being practiced here in this area?

3 A. Yes.

4 Q. What have you heard?

5 A. Oh, I heard that there was a cult, I think they  
6 call it, or coven or something of -- "Bumblebee".

7 Q. "Bumblebee"?

8 A. That's at a campground up the river.

9 Q. And how often has this been discussed?

10 A. I really don't know. I just heard the conversation  
11 once and they may be there, they may not be. I haven't seen  
12 them.

13 Q. What impression did it make on you?

14 A. Kind of funny. I really don't know if I believe  
15 it or not.

16 Q. All right. You were asked by the Prosecutor as  
17 to whether or not any of your family had been involved in any  
18 scrapes with the law. I believe your answer was "no".

19 Have any of your family, your relatives, close  
20 acquaintances, been victims of any crimes?

21 A. Not really. My little daughter almost was about  
22 a year and a half ago.

23 Q. What was this? An attempted molesting or something?

24 A. A man threw a knife at her.

25 Q. Oh?

1 A. But he missed her and, of course, he got away.

2 Q. All right. And are any members of your family, or  
3 any close acquaintances, users of narcotics or drugs?

4 A. Not to my knowledge.

5 Q. Do you have a prejudice against those persons who  
6 may use drugs?

7 A. I don't think they are very smart because it's  
8 not very --

9 Q. All right. Now, Mrs. Koole, if evidence is  
10 introduced in the form of pictures of victims, the deceased in  
11 this case, they may be in color and grotesque. Would that,  
12 in itself, upset you and cause you to form a prejudice in this  
13 case?

14 A. I don't think so. I'm a murder fan, you know, the  
15 stories and books.

16 Q. All right. And at the same time if testimony and  
17 documents come through that have vulgar, profane, coarse, crude  
18 words, will this tend to aggravate you, embarrass you and cause  
19 some sort of prejudice?

20 A. Wouldn't cause prejudice, if I heard them it might  
21 embarrass me.

22 Q. Well, would it in itself cause you prejudice  
23 against the defendant?

24 A. No, because I think people in all walks of life  
25 use lousy language sometimes.

1 Q In your watching television did you happen to see  
2 the movie this past Sunday evening, night before last, called  
3 Kathryn, a story of a girl revolutionary?

4 A No.

5 Q And you've heard nothing of this case in  
6 conversations?

7 A Just what you heard I told them, I saw in the  
8 newspaper about the motels which I thought was rather ridiculous.

9 Q All right. Now, it's apparent that Mr. Creech has  
10 tattoos, not only on his arms and hands, but on his cheek bone.  
11 The testimony may relate that these are akin to a cult. Would  
12 that fact in itself prejudice you against Mr. Creech?

13 A No, I never heard of anything like that before.

14 Q All right. Then, Mrs. Koole, you know yourself  
15 better than anyone else here in this courtroom and you know your  
16 personality and your thoughts and your convictions. Other than  
17 those questions that we've asked you, do you know of anything  
18 about yourself that would tend to disqualify you as a juror to  
19 sit and hear this case?

20 A No.

21 Q Do you feel that you are unbiased, unprejudiced  
22 and can afford a fair trial if you are selected as a juror?

23 A I've always considered myself completely unbiased.

24 MR. ROBINSON: Pass Mrs. Koole for cause, Your Honor.

25 THE COURT: All right, Mrs. Koole, we'll ask you to wait

1 in the jury room and please don't discuss the questioning with  
2 the other members of the panel.

3 MR. ROBINSON: Your Honor, excuse me just a second, we  
4 seem to have pre-emptory marked plaintiff's and defendant.

5 MR. REMAKLUS: These are mixed up, or something.

6 MR. ROBINSON: These are also mixed up.

7 THE COURT: Well, just write on them whatever it should  
8 be.

9 MR. ROBINSON: Does the Court want initials or  
10 signature on these also?

11 THE COURT: No, as long as -- just identify as the  
12 defendant's and the challenge number, right the number of the  
13 juror.

14 All right, the next stand-by juror is  
15 Frank G. Oberg, number 80.

16 I'll direct the Clerk to draw another stand-by  
17 name.  
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1 FRANK G. OBERG,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Mr. Oberg, I want to ask you a few questions at  
8 first and then the attorneys will want to ask you some questions.

9 All our proceedings here have to be reported by the  
10 Court Reporter so it will be necessary for you to answer  
11 audibly and not just nod your head and also loudly enough so  
12 he can hear you and write down what you say, okay?

13 A Yes, sir.

14 Q I want to visit with you for just a few minutes  
15 about the procedure we'll follow on handling the jury once the  
16 trial starts so we can find out whether this is going to create  
17 any serious problems for you.

18 Right now none of us know for sure how long this  
19 trial will last but our best estimate at -- and probably a  
20 reasonable estimate at this time will be about three weeks.

21 Now, once we have completed the selection of the  
22 jury and are sworn to try the cause and actually start the  
23 part of the trial where we take evidence the jury will be  
24 housed at a motel, at the Stardust Motel, and take your meals  
25 at the restaurant under the supervision of the Bailiffs and you

1 will not be able to go home during recesses or in the evening  
2 until the trial is over.

3 Now, bearing that procedure in mind, is there  
4 anything in your personal life, your home situation, the work  
5 situation, that would make this impossible for you to handle or  
6 create an extreme hardship? We recognize that at the outset  
7 it will be inconvenient and will be inconvenient for all jurors  
8 so we can't talk simply inconvenience, but if there's some  
9 real serious problems in your situation we'd like to know about  
10 them.

11 A. No, there is nothing that way that would --

12 Q. Create a problem?

13 A. -- create a problem.

14 Q. That you couldn't handle?

15 A. Yes, sir.

16 Q. All right, fine. Turn to another subject, then,  
17 Mr. Oberg.

18 Under our law our philosophy of justice and system  
19 of justice a defendant in a criminal trial is presumed to be  
20 innocent until his guilt is established beyond a reasonable  
21 doubt by the State. Now, this means the State has to go ahead  
22 with the evidence first and they actually have to prove the  
23 defendant's guilt beyond a reasonable doubt. The defendant  
24 doesn't have to prove his innocence or present anything to  
25 prove that he's innocent. The burden is on the State.

1 I'll give you instructions in the course of the  
2 trial explaining these terms more fully, but what this  
3 principle means right now at this stage of the proceeding before  
4 any evidence has been received is that Mr. Creech, the defendant  
5 here, must be considered to be innocent.

6 Now, I'm wondering whether you are able at this  
7 time to give Mr. Creech the benefit of this principle and  
8 actually consider him innocent at this time?

9 A Yes, sir, I believe I do.

10 Q All right, Mr. Oberg, have you heard or read  
11 anything at all about this case, or about what purports to be  
12 the facts of this case?

13 A No, I have not.

14 Q As far as your memory right now, or your  
15 understanding, you haven't heard any of the purported facts  
16 of this case --

17 A No, I have not.

18 Q -- except what you may have heard in court the  
19 other day?

20 A Yes.

21 Q Under our law, Mr. Oberg, neither the jury nor the  
22 Court has any discretion fixing the penalty for First Degree  
23 Murder. Our legislature has passed a law in which the  
24 legislature has done this and the legislature in that law has  
25 taken away any responsibility of the jury or the Judge to fix

1 the penalty for First Degree Murder.

2 The legislature has fixed this penalty and death,  
3 made the death penalty mandatory in Idaho for First Degree  
4 Murder.

5 Now, knowing this to be the law do you have any  
6 personal beliefs or feelings about the death penalty which  
7 would prevent you from fairly considering the evidence and  
8 the law on a First Degree Murder charge?

9 A. No, I believe I don't.

10 Q. You feel you could fairly weigh the evidence and  
11 decide guilt or innocence without being -- having a real  
12 problem about the penalty that goes along with it?

13 A. Yes, I do.

14 Q. Under our system of trials, Mr. Oberg, the jury  
15 will be the judges of the facts, I'm supposed to give the law  
16 to the jury. Now occasionally I think jurors find the law is  
17 different than they thought it would be, or perhaps they even  
18 disagree with the law. Are you prepared, or do you have any  
19 reason to know why you couldn't accept the instructions as to  
20 the law that I would give to you?

21 A. No, I believe I could accept them.

22 Q. You'd accept them? Do you know of any reason  
23 that I haven't asked you about why you couldn't be a fair and  
24 impartial juror to both sides here?

25 A. No, I don't.

1 THE COURT: Okay. Counsel may examine.

2  
3 VOIR DIRE EXAMINATION

4 BY MR. REMAKLUS:

5 Q. Have you been a juror before, Mr. Oberg?

6 A. No, I have not.

7 Q. Have you lived around here -- you've lived here in  
8 Shoshone County 29 years, is that right?

9 A. That's correct.

10 Q. How long have you worked for Bunker Hill?

11 A. Twenty-one years and about four or five months.

12 Q. Um-hmm. What kind of work do you do?

13 A. I'm a brakeman.

14 Q. Is that on the train that hauls ore?

15 A. Yes, um-hmm.

16 Q. I notice here that you have three children and  
17 they are all grown, is that right?

18 A. Grown and married, yes.

19 Q. Um-hmm. And what do your children do now? Where  
20 do they live?

21 A. Well, one of them lives up there by me and her  
22 husband works in Spokane on construction work and the other  
23 one lives in Pinehurst. My son lives up Big Creek.

24 Q. And what does your son do?

25 A. He works in the mines as a hoist man.

1 Q Um-hmm. And, then, you say you have a daughter  
2 that lives over in Pinehurst?

3 A Yes.

4 Q What does her husband do?

5 A He works in the Bunker Hill Smelter.

6 Q Um-hmm. What do you -- do you have any hobbies  
7 now that the kids are raised and gone?

8 A Oh, yes.

9 Q Tell me about them, please.

10 A Well, I do quite a little hunting, fishing and  
11 traveling around during the summer on my vacations.

12 Q Um-hmm. Do you own your own home, Mr. Oberg?

13 A Yes, I do.

14 Q Do you take the daily papers?

15 A Yes.

16 Q Which paper do you get?

17 A Kellogg Evening News and Spokesman, Spokane  
18 Chronicle.

19 Q Do you take any magazines in the mail?

20 A Yes, I get that Changing Times and couple other  
21 ones, Veterans of Foreign Wars magazine and the Outdoorsman.

22 Q Um-hmm. Now, do you folks watch television?

23 A Very seldom I ever watch television.

24 Q You don't have any misconceptions about how  
25 lawsuits are going to be tried by watching some of those lawyer

1 shows on television?

2 A. No, I very seldom ever watch it. About the only  
3 time I look at a television set is when the World Series is on,  
4 or a good football game, then I'm there.

5 Q. As the Judge has told you, the legislature has  
6 already set the death penalty for First Degree Murder so there  
7 isn't anything that any of us have to say about that. Would  
8 that bother you, knowing that that is the penalty? If you have  
9 to look at the evidence, would that keep you from returning a  
10 verdict of guilty of First Degree Murder if you were satisfied  
11 in your own mind that that's what the evidence showed?

12 A. That's what the evidence showed, I would have to  
13 go along with it.

14 Q. I think you already told the Judge that there  
15 wouldn't be any particular problem, but you could spend the  
16 time if you are selected here?

17 A. Yes.

18 MR. REMAKLUS: We will pass the juror for cause.

19 MR. ROBINSON: If I may?

20 THE COURT: Yes.  
21  
22  
23  
24  
25

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mr. Oberg, what is the nature of your formal education, sir?

A Well, not too good. I just went to the ninth grade.

Q And educated yourself in this world of hard knocks and become a brakeman at Bunker Hill; is that correct?

A Well, I had a little more schooling afterwards when I was in the CC camps also while I was in the Army.

Q And how long did you serve in the Army?

A Three years.

Q And where was that, sir?

A In the Southwest Pacific.

Q Between '43 and '46?

A Yes, 1942 to 1945.

Q And was that in the Seabees or artillery or what?

A With the Combat Engineers.

Q I see. And what is your church affiliation, sir?

A I belong to the Church of God.

Q You believe in God?

A Yes, sir.

Q You believe that Satan exists?

A Well, yes.

Q Mr. Oberg, in your work and the conversations you

1 have socially, have you heard anything about witchcraft being  
2 practiced here in this Shoshone County area?

3 A. No, I haven't heard anything about it.

4 Q. And has any member of your family, close friends  
5 or relatives, run afoul of the law, been in trouble with the  
6 law?

7 A. No, not that I know of.

8 Q. And the same group of people, have any of them  
9 been victims of a crime committed against them?

10 A. Not that I know of.

11 Q. Are you associated with, or know of anyone that  
12 uses drugs, narcotics and drugs?

13 A. No, I don't.

14 Q. Do you have any, just outright prejudices against  
15 a person who does use narcotics and drugs?

16 A. No.

17 Q. Now, Mr. Oberg, the evidence here may develop  
18 where there is some profanity, vulgar language that is used and  
19 it may also develop that there are some color photographs  
20 showing the bodies of the victims in this case. Now, either the  
21 language or the photographs, would that tend to incite you and  
22 cause prejudice against the defendant that is charged?

23 A. No.

24 Q. Knowing yourself better than anyone else here in  
25 this courtroom and your own personality, do you know of any

1 reason, whether we've asked you or not, outside of the  
2 questions that you've answered so far, do you know of any  
3 reason why you would not feel yourself qualified to sit as a  
4 juror and try this case?

5 A. No, I don't believe so.

6 Q. You feel that you are a fair, unbiased,  
7 non-prejudicial person and can afford a fair trial?

8 A. I believe so.

9 MR. ROBINSON: Pass Mr. Oberg, Your Honor.

10 THE COURT: Mr. Oberg, we'll ask you to remain in the  
11 jury room there, then, and ask you not to discuss this  
12 questioning with the other members of the panel, please.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mrs. Dumont, if the chairs are all used,  
15 why don't you take all of them, except prospective jurors that  
16 are waiting to be questioned, down to that conference room so  
17 we'll have more room.

18 We'll take Harold Horine, number 48.

19 I'll have the Clerk draw another stand-by juror.  
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HAROLD J. HORINE,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mr. Horine?

A Yes.

Q All right, Mr. Horine, I want to ask you a few  
questions and then the attorneys will ask you a few. The  
Court Reporter here has to report everything that transpires  
here so you will need to answer audibly rather than nodding  
your head and --

A Okay.

Q -- and answer loudly enough so he can hear you  
and write down your answer.

First I want to discuss with you the procedure  
as far as handling the jury once the jury is selected and  
start with the trial. At that point the jurors will be housed  
in a motel, the Stardust, and take their meals at a restaurant  
under the supervision of the Bailiffs. We call this sequestering  
the jury; that will have to continue until the trial is over.  
This means you won't be able to go home at the evening recesses  
and during any recess once the trial actually starts, you see?

Bearing that procedure in mind, is there anything

1 in your personal life, your home situation or your work that  
2 would make it impossible for you to do this, or create an  
3 extreme hardship. I phrase it in those terms because we know  
4 it's going to be inconvenient for all the jurors, but we can't  
5 grant an excuse just for inconvenience. But, if there is a  
6 real serious situation to you personally we'd like to know about  
7 it.

8 A. Well, not that I know of right at the moment.  
9 My wife's in Missouri, her sister is on her death bed and I'd  
10 -- my boy is at home.

11 Q. How old is he?

12 A. He's twenty-six.

13 Q. He can take care of himself?

14 A. Yeah.

15 Q. Would there be any anticipation, if there's a death,  
16 for you to go back to the funeral?

17 A. No, I wouldn't go back.

18 Q. You wouldn't be planning on going back?

19 A. No.

20 Q. Of course, when your wife returns, if you were on  
21 the jury there wouldn't be anything to prevent you from sending  
22 out personal messages about your, you know, to your wife as long  
23 as you didn't discuss the case and understood it would go through  
24 the Bailiffs. So, that order would just prevent you from  
25 discussing the case with anyone or sending out information about

1 the case, or getting information in about the case, but wouldn't  
2 prevent you from sending out messages about personal affairs.

3 A. Yes.

4 Q. Business affairs. You feel you could handle the  
5 situation then?

6 A. You bet.

7 Q. All right. Turn to another subject, then,  
8 Mr. Horine.

9 Under our philosophy of justice and the system of  
10 criminal law, a defendant in a criminal action is presumed to  
11 be innocent until his guilt is proved beyond a reasonable  
12 doubt by the State. This, in effect, requires the State to go  
13 forward with the evidence and prove guilt beyond a reasonable  
14 doubt and it means on the defendant's side that he does not  
15 have to present any evidence to show his innocence or doesn't  
16 have any burden in regard to proving innocence. What this means  
17 at this particular stage of the proceeding is that the  
18 defendant here, Mr. Creech, must be considered to be innocent  
19 if this principle is followed.

20 Now, I am wondering right now as he sits here, are  
21 you able to give him the full benefit of this principle?  
22 Consider him to be innocent right now?

23 A. I think so.

24 Q. Have you read or heard anything in the newspaper,  
25 radio or TV or from other people that purport to be any facts

1 about this case?

2 A. I just heard a little bit about it before I came  
3 over here.

4 Q. Before it came over here?

5 A. Yes.

6 Q. Do you know, now, from your memory can you tell  
7 me just what facts you remember hearing, or what purported  
8 facts you remember hearing about the case at that time?

9 A. Well, just that reports from Oregon and Washington  
10 and down here and that's all, in Southern Idaho.

11 Q. You had heard something about reports from -- you  
12 say Washington?

13 A. Yes.

14 Q. Oregon and Southern Idaho?

15 A. Um-hmm.

16 Q. Really, all we're trying to test is how much of  
17 this sticks in your mind and what the details are, Mr. Horine.  
18 It does have a bearing here.

19 Can you give me any more information in detail  
20 about what you remember hearing about Washington or Oregon?

21 A. Well, they just said that there was reports that  
22 he was -- might be connected with them, that was all.

23 Q. Your impression of what you read was it was just  
24 a possibility, is that it?

25 A. Yes.

1 Q Do you remember any other details about these  
2 stories?

3 A No, not really.

4 Q Any other purported facts relating to the  
5 defendant at all that you've heard or read about from what  
6 you've related now?

7 A No.

8 Q From these things you have heard and you've  
9 related here, will that cause you any problem in applying this  
10 principle that I've already explained; about considering the  
11 defendant innocent?

12 A No, I don't think so.

13 Q In other words, you don't give it any credence  
14 to that that would interfere with that principle, then?

15 A No.

16 Q Based on any of these things you've heard, have  
17 you formed any opinion as to the guilt or innocence --

18 A No opinion whatsoever.

19 Q So, you feel your mind is open as you could apply  
20 this presumption of innocence at this time, then?

21 A (No audible response.)

22 Q You feel that you could, whatever these things  
23 are you've heard, you could set those completely aside and  
24 decide this case directly on the evidence that's submitted here  
25 in court?

1 A Yes, sir.

2 Q And proper evidence to consider?

3 A Yes, I could.

4 Q I want to turn to another principle of our law  
5 that comes as a surprise, I found out, to some jurors,  
6 Mr. Horine.

7 Under our Idaho law, neither the jury nor the  
8 Judge has any discretion as to the penalty to be imposed in  
9 a First Degree Murder. Our legislature has passed a law making  
10 the death penalty mandatory for First Degree Murder. So, the  
11 legislature, in fact, has taken the matter clear out of the  
12 hands of the jury and the Judge and fixed that penalty. If the  
13 jury finds the defendant in this case is guilty beyond a  
14 reasonable doubt, all First Degree Murders, that penalty falls  
15 automatically.

16 I'm wondering, knowing this to be the law, if you  
17 have any personal beliefs or feelings about the death penalty  
18 which would prevent you from fairly considering the evidence  
19 and the law bearing on this charge of First Degree Murder?

20 A Well, I personally -- I don't believe in taking  
21 a life, really.

22 Q You are personally opposed to the death penalty?

23 A Yes, sir.

24 Q I need to find out, Mr. Horine, whether this  
25 belief is fixed strongly enough so that it would actually

1 prevent you from even considering finding a defendant guilty  
2 of First Degree Murder?

3 A Well, I don't know how to answer you. But, I  
4 don't think it would.

5 Q I guess I'm going to ask you the same thing but,  
6 maybe change the wording around just a little bit, maybe make it  
7 a little easier for you to answer.

8 Would this personal feeling you have about being  
9 opposed to the death penalty prevent you from finding the  
10 defendant guilty of First Degree Murder under any state of the  
11 evidence?

12 A Well, if --

13 Q What I'm saying is, if you said to yourself,  
14 "Well, the State has really proved him guilty beyond a  
15 reasonable doubt of First Degree Murder, but I just can't  
16 render that verdict because the death penalty will follow",  
17 would you feel you would take that position?

18 A I don't think so. I really don't know how to  
19 answer you on that because I don't know.

20 Q I appreciate we're trying to force you ahead into  
21 the future situation, but that's about all we can do and I  
22 know I can see your problem, you aren't face-to-face with it  
23 right now.

24 A No.

25 Q And it's hard to judge what you feel like.

1 A. True.

2 Q But, I don't know how else to approach it,  
3 Mr. Horine and just that way that whether your feeling is so  
4 strong about the death penalty, no matter what the State proved,  
5 you just would not find the defendant guilty of First Degree  
6 Murder?

7 A. No, I don't think that would affect me that way.

8 Q Do you think, if the case were proved that you  
9 could still render the verdict?

10 A. I think so.

11 Q You -- even though you'd personally be opposed to  
12 the penalty that the legislature has fixed?

13 A. Yeah.

14 Q It will be the function of the jury, under our  
15 system, to determine the facts and it's the function of the  
16 Judge to explain the law to the jury and give the law to the  
17 jurors on instructions.

18 Sometimes, I think, jurors find the law is  
19 different than they thought it was. Sometimes they think --  
20 maybe think the law, as explained to them, is wrong. Do you  
21 think you could, however, follow the instructions of the Court  
22 on the law?

23 A. I think so.

24 Q Do you know of anything that would prevent you  
25 from being a fair and impartial juror to both sides in this

1 case ---

2 A. No.

3 Q. -- as far as determining guilt or innocence? You  
4 say no?

5 A. No.

6 THE COURT: Counsel may inquire.

7

8 VOIR DIRE EXAMINATION

9 BY MR. THOMAS:

10 Q. Mr. Horine, considering your reservation about  
11 the death penalty, would you be willing to accept the  
12 principle that in that First Degree Murder case the jury is  
13 not responsible for the verdict -- I mean, for the penalty?

14 A. They are not responsible?

15 Q. In other words, as the Judge explained, it isn't  
16 up to the Judge or the jury to determine what the penalty will  
17 be in a First Degree Murder case if the defendant is convicted.  
18 You understand that?

19 A. Yes.

20 Q. Are you willing to accept that point of view if  
21 you sit on this jury?

22 A. Yes.

23 Q. And you could make your determination of whether  
24 the evidence showed beyond a reasonable doubt that the  
25 defendant was guilty and not let the fact that First Degree

1 Murder conviction calls for a mandatory death penalty influence  
2 your decision; is that correct?

3 A. No, if it was proven, why, I don't think anything  
4 would influence me other than --

5 Q. You could then vote for a conviction even  
6 knowing that First Degree Murder called for a mandatory death  
7 penalty?

8 A. Well, if it was proven that's what it was, you  
9 wouldn't have any choice.

10 Q. Yes, proven beyond a reasonable doubt?

11 A. That's right.

12 Q. Now, Mr. Horine, you wouldn't let reasonable  
13 doubt be an excuse to acquit a man if you didn't have what was  
14 genuinely a reasonable doubt, would you?

15 A. How was that, now?

16 Q. You wouldn't use the phrase "reasonable doubt"  
17 just as an excuse for an acquittal if there was evidence that  
18 convinced you to a moral certainty that the defendant was  
19 guilty? You wouldn't do that, would you?

20 A. (No audible response.)

21 Q. You feel that you can, in this case, give the  
22 State, as well as the defendant, a fair trial?

23 A. I think so.

24 Q. Do you watch a program on television, Mr. Horine,  
25 in which lawyers and courtroom situations are portrayed.

1 A. No.

2 Q. Have you seen any at any time?

3 A. Well, possibly a few years ago, but not -- I don't  
4 care for them.

5 Q. Would any of those programs that you may have seen  
6 influence you in considering the evidence here?

7 A. None whatever.

8 Q. Have you read any books or articles about law and  
9 lawyers recently?

10 A. No, sir.

11 Q. Have you read any books about famous or well-known  
12 trials?

13 A. No.

14 Q. You understand, do you not Mr. Horine, that if  
15 you sit on the jury that you will be the judge of the believability  
16 of any of the witnesses who appear in this trial? Do you have  
17 any doubt in your own mind that you could evaluate a person's  
18 credibility and believability and come to your own conclusion  
19 about whether or not his testimony was to be believed?

20 A. Well, I could judge myself, but not somebody else,  
21 that is as far as any individual, I don't know just how to  
22 explain it.

23 Q. You would be prepared, though, to perform the  
24 function of judging the believability of the witnesses?

25 A. Yes.

1 Q I believe, Mr. Horine, that the Court will  
2 instruct in the course of the trial that a reasonable doubt is  
3 not just an imaginary doubt, it is just what it says, a  
4 reasonable doubt. As a juror it would be up to you to determine  
5 whether or not you are certain in your own mind that the  
6 defendant is guilty; that is, that the charges have been proved  
7 beyond a reasonable doubt.

8 Do you feel that it would be any confusion in your  
9 mind about the distinguishing between what is a reasonable  
10 doubt and what is a fancied or imaginary doubt?

11 A No, I do understand it.

12 Q You could tell the difference?

13 A I think so.

14 Q I don't wish to pry into your personal life and  
15 affairs, Mr. Horine, but I hope you bear with me for just a  
16 moment because we do have to ask a few questions about general  
17 background to get a good idea how well suited you are to sit  
18 on a jury.

19 May I ask you, where were you born?

20 A Columbus, Kansas.

21 Q How long have you lived here, sir?

22 A I came out here in '60, March of '60.

23 Q Now, I notice that -- by your questionnaire, that  
24 you are a custodian at School District 391; is that correct?

25 A Yes.

1 Q How long have you been in that job?  
2 A A little over seven years.  
3 Q Is that a kind of work that you enjoy?  
4 A No, I went on that because my back gave out on me  
5 and I couldn't do any heavy work.  
6 Q I see. You have a number of children who are  
7 grown and are no longer living at home; is that correct?  
8 A No, because the boy is there just temporarily.  
9 Q I see. What occupations are your children in?  
10 A One is a miner over at Butte, and then, I have a  
11 daughter in Honolulu, she is just a housewife and I have  
12 another daughter in St. Louis. Then, I have two daughters here  
13 and one boy at home.  
14 Q I see. Are the two daughters who live here  
15 married?  
16 A Yes.  
17 Q And they are housewives?  
18 A Yes.  
19 Q What do their husbands do?  
20 A One works in the logging industry and the other  
21 one works at Bunker Hill.  
22 Q What is your educational background, Mr. Horine?  
23 A Tenth grade.  
24 Q And your religious preference?  
25 A Assembly of God.

1 Q Are you a regular church attender?  
2 A I go all the time. I don't belong to the church.  
3 Q But, you attend fairly regularly?  
4 A Yes.  
5 Q Do you know any of the attorneys in this case?  
6 A No, sir.  
7 Q Do you know any of your close friends or relatives  
8 who may know any of the attorneys participating in this trial?  
9 A I couldn't say on that.  
10 Q You are not aware of any?  
11 A No.  
12 Q Have you or any of your close friends or relatives  
13 had any legal difficulties, or been involved in a criminal or  
14 civil lawsuit?  
15 A Not that I know of.  
16 Q Do you have any previous jury experience?  
17 A No, sir.  
18 Q Have you ever appeared as a witness in a criminal  
19 case?  
20 A No, sir.  
21 Q Do you do any volunteer work of any kind?  
22 A No.  
23 Q If the evidence in this case should reveal that  
24 the victims of this crime were not very admirable people, would  
25 that tend to influence you to believe that murder was excusable,

1 or less serious?

2 A. No.

3 Q Have you ever discussed this particular case with  
4 any person who thought the defendant was either guilty or not  
5 guilty?

6 A. No, I never discussed it. I've listened a little  
7 bit, but that's about all.

8 Q Have you heard anything that you did not already  
9 explain to the Judge?

10 A. No, sir.

11 MR. THOMAS: Pass the juror for cause, Your Honor.

12

13 VOIR DIRE EXAMINATION

14 BY MR. ROBINSON:

15 Q Mr. Horine, in your church affiliation and such  
16 over your life, can you state definitely yourself whether or  
17 not you believe in God?

18 A. I think so.

19 Q Do you believe that Satan exists?

20 A. Yes.

21 Q From all of the questions that you have been asked  
22 Mr. Horine, do you feel that you are a person, yourself, who is  
23 unbiased and unprejudiced and can sit as a juror and provide a  
24 fair trial in this case?

25 A. I think so.

1 Q And knowing yourself better than anyone else knows  
2 you in this courtroom, is there anything in your make-up, in  
3 your understanding of your own personality, that you feel that  
4 would disqualify you to sit as a juror in this case?

5 A None that I know of.

6 MR. ROBINSON: Pass Mr. Horine for cause.

7 THE COURT: Mr. Horine, we'll ask you to wait in the  
8 jury room, then, and ask you not to discuss the case with the  
9 -- questioning here with any of the other members of the panel.  
10 Thank you.

11 I'll advise Counsel that the stand-by juror is  
12 Walter I. Nelson, number 78.

13 I'll have the Clerk draw another number.

14  
15 WALTER I. NELSON,  
16 a prospective juror herein, having been first duly sworn, took  
17 the stand and testified as follows:

18  
19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q Mr. Nelson, I want to ask you just a few questions  
22 and then the attorneys will probably ask you a few questions.  
23 Everything we say here has to be taken down by the Court  
24 Reporter so if you would answer audibly and not just nod your  
25 head and answer loudly enough so he can hear you, okay?

1 A. Yes, sir.

2 Q. I want to visit with you for just a minute about  
3 the procedure we'll follow once the jury is selected to try the  
4 cause and we actually get started in the trial.

5 None of us know how long this trial will take right  
6 now, but our best estimate is about three weeks and I think  
7 that's probably a reasonable estimate.

8 Once the jury is completely selected and we start  
9 that phase of the trial where evidence is taken we do what we  
10 call sequester the jury; this means that the jurors will be  
11 housed in a motel, the Stardust, take their meals in restaurants  
12 and under the direction of the Bailiffs and will not be able to  
13 separate and go home at night or during recesses.

14 You understand that procedure?

15 A. Yes, sir.

16 Q. We're wondering if there's anything in your  
17 personal life, your home situation, work situation or anything  
18 else that would make it impossible for you to perform under  
19 these circumstances, or create an extreme hardship. We  
20 recognize it will be inconvenient for any juror so we prefer  
21 not to talk about just inconvenience, but we are interested if  
22 you think there's something special in your situation that  
23 would create an extreme hardship, or just make this impossible  
24 for you to live with.

25 A. No, sir.

1 Q There isn't?

2 Turn to another subject, then, Mr. Nelson. Under  
3 our system of justice and philosophy of law the defendant in a  
4 criminal action is presumed to be innocent until his guilt is  
5 established beyond a reasonable doubt by the State.

6 Now, later on in the trial I'll give you more  
7 elaborate instructions about what these terms mean, but I think  
8 just for present purposes it's self-explained, what this means  
9 at this stage of the trial. This means that the defendant does  
10 not have to do anything to prove his innocence because the law  
11 cloaks him with a presumption of innocence at this stage  
12 until he's proved guilty beyond a reasonable doubt. So, he  
13 doesn't have to come forward with any proof to prove his  
14 innocence. Do you understand that?

15 A Yes, sir.

16 Q So, this means that right at this stage of the  
17 proceeding, before any evidence has been presented, that this  
18 defendant, Mr. Creech, must be considered to be innocent. Now,  
19 do you feel, searching your conscience, that you are able to  
20 give Mr. Creech the full benefit of this principle and consider  
21 him to be innocent right at this time?

22 A Yes, sir.

23 Q All right. You have no quarrel with that principle?

24 A No, sir.

25 Q Have you read or heard anything, either in the

1 newspapers, radio, television or from other persons that  
2 purport to be any facts about this case; other than what you  
3 heard over in court the other day?

4 A. No, sir.

5 Q. You haven't heard anything that purports to be  
6 facts about Mr. Creech or the case here?

7 A. No, sir.

8 Q. I want to turn to another subject, then, Mr. Nelson,  
9 that I found comes as a little surprise to some jurors.

10 Under our Idaho law, neither the jury nor the  
11 Judge has any discretion as to the penalty to be imposed for  
12 First Degree Murder. The legislature has seen fit to make  
13 the death penalty mandatory by passing a law that makes it  
14 mandatory. The legislature has made this decision and taken it  
15 out of the hands of the jury and the Judge and to fix the  
16 penalty of First Degree Murder, as found -- if a defendant is  
17 convicted of First Degree Murder.

18 Now, knowing this to be the law do you have any  
19 personal beliefs or feelings about the death penalty which  
20 would prevent you from fairly considering the evidence and the  
21 law bearing on that charge of First Degree Murder?

22 A. No, sir.

23 Q. Under our system of trials, Mr. Nelson, it is the  
24 function of the jury to decide the facts and test the  
25 credibility of witnesses. It's the function of the Judge to

1 instruct the jury as to the law. Occasionally I think jurors  
2 probably find the law is different than the juror thought it was,  
3 or perhaps sometimes the juror actually disagrees with the law  
4 as the Court instructs the jury.

5 Do you know of any reason why you couldn't accept  
6 the law and follow the instructions the Court gives you in this  
7 matter?

8 A. No, sir.

9 Q. Do you know of any reason that I haven't asked you  
10 about why you couldn't be a fair and impartial juror to both  
11 sides in this case?

12 A. No, sir.

13 THE COURT: Counsel may inquire.

14  
15 VOIR DIRE EXAMINATION

16 BY MR. REMAKLUS:

17 Q. How long have you worked there for Bunker Hill,  
18 Mr. Nelson?

19 A. Fourteen years.

20 Q. Are you -- where did you grow up?

21 A. I spent the first 13 years in Kansas and the rest  
22 here in Idaho.

23 Q. And you've been here in Shoshone County, then,  
24 haven't you, the rest of that time?

25 A. Yes, sir.

1 Q Um-hmm. Did you -- what is your educational  
2 background?

3 A High school and spent three years in the Service.

4 Q Um-hmm. What branch were you in?

5 A Army.

6 Q Did you take some additional training while you  
7 were in the Army?

8 A Just the training for my job.

9 Q Um-hmm. What did you do there?

10 A I was a missile systems mechanical repairman.

11 Q So, you started learning the electrician business  
12 right then?

13 A Right. I became familiar with it, yes, sir.

14 Q Did you -- have you taken special training, or  
15 did you learn this on the job, your trade now?

16 A I learned it on the job.

17 Q Um-hmm. So you have two children but neither of  
18 them are with you, is that right?

19 A No, sir, they are both in the Service.

20 Q What branch of the Service are they in?

21 A One, he's in the Marine Corps and one is in the  
22 Navy.

23 Q Both boys?

24 A Yes, sir.

25 Q I guess girls can join those branches now, too.

1                   You've never been a juror before, have you?

2           A.     No, sir.

3           Q.     I notice on your questionnaire that you turned in  
4 something about an automobile accident. Were you injured in  
5 an automobile accident? A member of your family?

6           A.     The wife was, it's been three or four years ago.

7           Q.     Yeah. Were you involved in a lawsuit? Did you  
8 get into a trial as a result of that?

9           A.     No.

10          Q.     Um-hmm.

11          A.     Everything was handled by the insurance.

12          Q.     Oh, I see. So, as far as you have had, this is  
13 your first visit to court, is it?

14          A.     No, sir, my parents died and I had to go to court  
15 on clearing the estate.

16          Q.     The estate? But, as far as being a juror, or  
17 a witness or anything like that; is this the first time?

18          A.     This is the first time, sir.

19          Q.     Do you have any hobbies, Mr. Nelson?

20          A.     I hunt and fish.

21          Q.     Those are your family hobbies? Does your wife  
22 go along on these trips?

23          A.     Once in awhile, yes.

24          Q.     Do you take some of the daily papers?

25          A.     Take the Kellogg paper. I hardly ever read it.

1 The wife is the one that reads the paper.

2 Q Do you take magazines at home through the mail?

3 A No, just the Reader's Digest.

4 Q Do you watch television?

5 A Yes.

6 Q Have you seen some of the recent programs like  
7 Petrocelli and some of the lawyer programs?

8 A I don't watch many of those.

9 Q You don't expect anything like that here, do you?

10 A No, sir.

11 Q That's fine. I'm afraid it isn't like that.

12 Nothing like that that you've seen there would have any  
13 influence on you as far as sitting here, listening to the  
14 evidence and making up your own mind, would it?

15 A No, sir.

16 Q Now, if you are selected here as a juror, of  
17 course, that's probably the most solemn obligation that you'll  
18 ever even take and since the death penalty is mandatory, do  
19 you feel -- are you sure in your own mind that that will not  
20 influence you as far as making your decision? Let me put it  
21 another way.

22 You are going to be called upon to view the  
23 evidence and make up your mind as to whether or not this  
24 defendant is guilty. Now, if you are satisfied that the  
25 State has proven the case beyond a reasonable doubt and that

1 he is guilty of murder in the first degree, would you let this  
2 death penalty thing interfere with your returning the verdict  
3 of guilty?

4 A. No, sir.

5 Q. Have any members of your family or any of your  
6 friends been involved in legal difficulties of any kind? Been  
7 in a criminal court or been sued?

8 A. Not that I can recall.

9 Q. Um-hmm. Can you think of any reason, whether I've  
10 asked you or not, why you couldn't be a fair and impartial  
11 juror here in this matter?

12 A. Not that I can think of.

13 MR. REMAKLUS: Thank you. I'll pass the juror for  
14 cause, Your Honor.

15 MR. ROBINSON: If I may, Your Honor?

16 THE COURT: Yes.

17  
18 VOIR DIRE EXAMINATION

19 BY MR. ROBINSON:

20 Q. Mr. Nelson, have any of your family, close  
21 relatives or your friends been victims of any crimes committed  
22 against them?

23 A. No, sir.

24 Q. What church are you affiliated with?

25 A. Nazarene, Lutheran.

1 Q And has this been a long-standing affiliation  
2 with the church?

3 A Not since I got out of high school, really.

4 Q Do you believe in God yourself?

5 A Yes, sir, I do.

6 Q Do you believe in the existence of Satan?

7 A Yes, sir.

8 Q Have you heard any rumors or conversations about  
9 witchcraft being practiced, or exercised, here in Shoshone  
10 County?

11 A I've heard rumors.

12 Q What rumors have you heard, sir?

13 A That -- it's been a year ago, I guess, there are  
14 people practicing up at North Fork, but that's only rumors.

15 Q What impression did you have of those comments?

16 A Rumors, they tend to multiply and are amplified  
17 as they are told, I think.

18 Q You think it was ridiculous?

19 A More or less.

20 Q Mr. Nelson, it may develop in this case that  
21 testimony will come in and there may be some writing, written  
22 documents that use vulgar, profane, coarse language. Would  
23 this tend to prejudice you against the defendant?

24 A No, sir.

25 Q There also may be some Exhibits in the nature of

1 photographs that are in color of the deceased victims, that are  
2 somewhat grotesque. Would this tend to prejudice you against  
3 the defendant, Mr. Creech?

4 A. No, sir.

5 Q. Have you been around any persons who have used  
6 narcotics or drugs?

7 A. I can't say I have.

8 Q. Do you have a particular prejudice of your own  
9 against persons who do use drugs?

10 A. Not really.

11 Q. Knowing yourself better than anyone else in this  
12 courtroom, Mr. Nelson, do you know of anything in your  
13 psychological make-up, your personality; other than what we've  
14 asked you about, that you would feel would not be desirable,  
15 or qualify you as a juror in this case -- or might disqualify  
16 you as a juror in this case?

17 A. No, sir.

18 Q. You can be a fair, unbiased person and render a  
19 fair trial if you are selected on this jury?

20 A. Yes, sir.

21 MR. ROBINSON: Pass Mr. Nelson for cause, Your Honor.

22 THE COURT: Thank you, Mr. Nelson. We'll ask you to  
23 step back in the jury room and remain there until further  
24 notice. If you will please not discuss the questioning here  
25 with any other members of the panel that might come in.

1 We will take a ten-minute recess at this time.

2 (Recess taken.)

3 THE COURT: Counsel ready to proceed?

4 MR. REMAKLUS: Yes, Your Honor.

5 MR. ROBINSON: Yes, Your Honor.

6 THE COURT: State's third pre-emptory.

7 I'll advise Counsel the next juror drawn is  
8 Ellen L. Noonan, number 79. Bring in Mrs. Noonan.

9 Draw another name, then.

10  
11 ELLEN L. NOONAN,  
12 a prospective juror herein, having been first duly sworn, took  
13 the stand and testified as follows:  
14

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q Mrs. Noonan, I want to ask you a few questions  
18 first and then the attorneys will each ask you some questions.

19 Everything we say has to be taken down by the  
20 Court Reporter so if you will please answer audibly and not just  
21 nod your head and answer loudly enough for him to hear you,  
22 please.

23 A All right, sir.

24 Q I want to visit with you first just a few minutes  
25 about the procedure we'll follow, after the jury is selected

1 and we start the portion of the trial involving taking evidence.

2           Once we reach that point the jury will be what  
3 we call sequestered; this means that the jurors will be housed  
4 at a motel, we've made arrangements at the Stardust for this,  
5 take your meals at motels -- I mean at restaurants under the  
6 direction of the Bailiffs and you won't be able to go home  
7 during evening recesses or any recesses until the trial is  
8 over, once we start that.

9           A.     Yes.

10          Q.     You understand that?

11          A.     Yes, I do.

12          Q.     We're wondering, then, first whether there's  
13 anything in your personal life, your home situation, work  
14 situation or anything else that would make this impossible for  
15 you to do, or create an extreme hardship. We recognize, of  
16 course, it will be inconvenient for all jurors, so we can't  
17 excuse jurors just because it's inconvenient. But, if there's  
18 something special in your situation that creates an extreme  
19 hardship, or renders this impossible, we would certainly  
20 consider it. Is there anything that creates a problem?

21          A.     No, I don't believe so.

22          Q.     You could handle this situation?

23          A.     I believe so.

24          Q.     All right. Turning to another subject, then,  
25 Mrs. Noonan, under our system of justice and philosophy of law

1 a defendant in a criminal action is presumed to be innocent  
2 until his guilt is established beyond a reasonable doubt by the  
3 State. I'm going to later instructions in the trial and  
4 explain these terms more fully to you. But, I think the present  
5 purpose, it's enough to just explain.

6 What this means is the State has to go forward  
7 with the evidence and, then, the defendant doesn't have any  
8 burden to prove his innocence or do anything to prove his  
9 innocence. The burden is on the State to prove him guilty.

10 A. Yes.

11 Q. It has to be done beyond a reasonable doubt. Now,  
12 what this means right at this stage of the proceeding is that  
13 Mr. Creech, the defendant, must be considered innocent at this  
14 stage of the proceeding.

15 Are you able at this time to give him the full  
16 benefit of this principle and consider him innocent?

17 A. Yes, I am.

18 Q. You don't have any quarrel with this principle of  
19 law?

20 A. No, none at all.

21 Q. Have you read or heard anything about this case  
22 in the newspapers or radio or TV or from any other friends or  
23 people you visited with?

24 A. Just papers last week we did and Friday and I  
25 think Saturday was just the -- the trial was going to be.

1 Q Let me ask you. We would like to know what  
2 specifically, if anything, you remember about the stories of  
3 anything that purported to report facts about the case on  
4 Mr. Creech, anything you remember that purported to be facts  
5 about the case or Mr. Creech from those stories?

6 A No, just that what he was -- why he was arrested  
7 and what they are trying him for, that was all.

8 Q That's all you remember?

9 A Yes.

10 Q Do you remember what it said about that? Do you  
11 have any details?

12 A Well, there were two men that were supposed to  
13 have been murdered and they wonder if he might not be the  
14 murderer.

15 Q I see. That's the extent of your memory?

16 A Yes, except maybe there were two men in Oregon  
17 and -- or two people in Oregon and that's all I know about.

18 Q There was some -- you recall some specific mention  
19 of something in Oregon?

20 A Well, just said there might be, or something like  
21 that. But, that was all.

22 Q Anything else you can remember that purported to  
23 be facts about Mr. Creech?

24 A No, I never heard of it until last Wednesday night.

25 Q Do any of these things you've related to us that

1 you have read in the paper, or cause you any reluctance or  
2 problem with considering Mr. Creech innocent today under this  
3 principle I've already outlined?

4 A. Well, he has to be proved guilty, I feel, before --

5 Q. So, these things you heard don't indicate guilt  
6 to you at all?

7 A. No, that doesn't prove he's guilty at all.

8 Q. I know. So, as you sit here today you haven't  
9 formed any opinion as to his guilt or innocence?

10 A. No, I haven't.

11 Q. And you are willing to presume him innocent under  
12 the law?

13 A. Absolutely, yes.

14 Q. Turning to another subject, then, Mrs. Noonan,  
15 I think this comes as a surprise to some jurors and maybe a  
16 shock to others and that's why I want to go over it with you  
17 right now.

18 Under our Idaho law, neither the jury nor the  
19 Judge has any discretion as to the penalty to be imposed in  
20 First Degree Murder. Our legislature has passed a law that  
21 makes the death penalty mandatory for First Degree Murder.  
22 In other words, the legislature has made the decision in taking  
23 it out of the hands of the jury and out of the hands of the  
24 Judge.

25 What the jury has to determine is guilt or

1 innocence and nothing about penalty. Now, knowing this to be  
2 the law, do you have any personal beliefs or feelings about  
3 the death penalty which would prevent you from fairly considering  
4 the evidence in the law bearing upon the charge of First Degree  
5 Murder?

6 A. Would you say that again?

7 Q. I say, nothing that --

8 A. Yeah.

9 Q. -- if the defendant is convicted of First Degree  
10 Murder it will carry an automatic death penalty --

11 A. Oh, yes.

12 Q. Do you have any feelings about the death penalty  
13 that would prevent you from considering the evidence in the  
14 law bearing on the First Degree Murder charge because, if you  
15 found him guilty of that, it would carry a death penalty?

16 A. No, I don't.

17 Q. Do you feel you could weigh the evidence --

18 A. Yes, I do.

19 Q. -- and make a determination on guilt or innocence?

20 A. I believe I could.

21 Q. In spite of the --

22 A. Yes, that's right.

23 Q. -- penalty you knew went with it if you found him  
24 guilty?

25 A. Yes.

1           Q.    It is the function of the jury to decide the  
2 facts and weigh the credibility and weight of witnesses'  
3 testimony, Mrs. Noonan. The function of the Judge is to  
4 explain the law to the jury and give the jury instructions on  
5 the law. Occasionally I think jurors find the law to be  
6 different than they thought it was and, perhaps, sometimes they  
7 even have some disagreement with the law as explained by the  
8 Court.

9                    Would you be willing to follow the instructions  
10 of the Court on the law whether you may disagree with some  
11 principle or not?

12           A.    That's what I would be expected to do, yes.

13           Q.    All right. Do you know of anything that would  
14 prevent you from being a fair and impartial juror to both  
15 sides in this case?

16           A.    Not anything that I would know, no.

17           THE COURT: Counsel may examine.  
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VOIR DIRE EXAMINATION

BY MR. THOMAS:

Q Mrs. Noonan, would it be fair to say that if you felt the evidence of this case that you would hear as a juror proved beyond a reasonable doubt that the defendant was guilty of murder in the first degree, could you convict him of that; even though the death penalty is mandatory?

A I believe I should.

Q You believe you should?

A I believe.

Q Do you have any personal reservations about the death penalty that you think would stand in your way of determining whether a defendant is guilty or innocent of murder in the first degree?

A Say that over again.

Q I said, do you have any personal reservations or feelings --

A No.

Q -- or philosophy about the death penalty?

A No, I don't.

Q I see. You are undecided about its merits, is that what you are saying?

A I do believe in the death penalty.

Q Oh, you do?

A Yes, I do. If a person, beyond doubt, is found

1 guilty I do.

2 Q I see. And you would be, then, willing to and  
3 able to concentrate on what -- whether the evidence shows  
4 guilt or innocence in this case without considering the penalty?

5 A Well, that's what I was supposed to do, yes, I'd  
6 have to.

7 Q Yes, that is right. You feel that you could give  
8 the State, as well as the defendant, a fair trial in this case?

9 A I believe so.

10 Q Let me ask you this, if I may, Mrs. Noonan: Do  
11 you watch television programs which are dramatizations of  
12 courtroom scenes?

13 A No, I do not.

14 Q Is there any particular reason?

15 A I don't like that sort of thing.

16 Q You don't like --

17 A Crime stories or anything.

18 Q I see. Is that because you are offended by crime  
19 or violence?

20 A Well, it just doesn't make me a better person  
21 watching those sorts of things. I do not like -- I don't  
22 like it and I'm not interested in it.

23 Q When you say "those sorts of things" are you  
24 referring to crimes and --

25 A Well --

1 Q -- violence?

2 A And these violent TV shows, I just don't.

3 Q Is it fair, then, to say that you don't like  
4 violence? You don't like to be exposed to it?

5 A Well, no, I don't. I mean, no, I don't.

6 Q I see. You think that would influence you in this  
7 case in any way?

8 A Well, I shouldn't think what difference about  
9 why do I have to watch something on TV and that sort of thing  
10 is -- I abhor that sort of thing.

11 Q Now, if the evidence in this case should show  
12 violence and, of course, it is a violent crime that is charged,  
13 do you feel that you would have any difficulty giving your full  
14 attention to the evidence and considering it fairly?

15 A Well, isn't that different than on the violence  
16 on TV?

17 Q It's possible and what I'd like to ask you is  
18 whether you think that you could devote your attention to the  
19 case.

20 A I should think I should.

21 Q Would you be distracted from listening to everything  
22 by the fact you don't like violence?

23 A No, I don't think so.

24 Q Have you read anything, any books or articles  
25 recently about law and lawyers or famous trials?

1 A. No, I haven't.

2 Q. Do you have any impression in your mind about  
3 how a lawsuit should be tried and how a criminal case should go?

4 A. No, I don't.

5 Q. If you are on the jury, Mrs. Noonan, you and your  
6 fellow jurors would be the sole judges of the credibility, or  
7 the believability of witnesses who testify in this case. Does  
8 that give you any problem, or any hesitation? You feel that  
9 you can judge fairly whether a person is believable or not?

10 A. Yes, I believe I can. I think I can anyway.

11 Q. The Court has mentioned the reasonable doubt  
12 standard in the questions that the Court asked you a few  
13 moments ago.

14 We think the Court will instruct you that in the  
15 course of the trial that reasonable doubt means just that;  
16 the kind of doubt which will result in acquittal has to be  
17 reasonable, it can't be imaginary or fantasized.

18 As a juror it would be up to you to determine  
19 whether or not you are certain in your mind the defendant is  
20 guilty; that is that the charges have been proved beyond a  
21 reasonable doubt. Do you feel any confusion about the  
22 difference between a reasonable doubt and an imaginary doubt?  
23 Do you think you would have any difficulty distinguishing  
24 between the two?

25 A. I don't know about that. I doubt if I would, but

1 I would say that there might be. I wouldn't say for sure.

2 Q You feel fairly confident that you could  
3 recognize an imaginary doubt if one came up, or were emphasized  
4 to you?

5 A I think perhaps I could.

6 Q We don't like to try to pry too much into your  
7 personal affairs, there are a few questions we would like to  
8 ask about your general background because it's our duty to find  
9 out as much as we can about jurors and I hope you will bear  
10 with me for just a moment while I ask you these questions.

11 Could you tell me, Mrs. Noonan, where were you born?

12 A In Iowa.

13 Q Where was that? What town?

14 A Spaulding, Iowa.

15 Q Spaulding? And how long have you been in Idaho?

16 A Since April, 1928.

17 Q Lived here all the time?

18 A Shoshone County.

19 Q I see, what is your educational background?

20 A High school and five-quarters of the University of  
21 Idaho -- I mean, Montana, rather.

22 Q I see. What did you study at the University of  
23 Montana?

24 A Well, chemistry and things like that.

25 Q And what is your religious preference?

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A. I'm Pentacost.

Q Do you attend church regularly?

A. Three or four times a week or three or four meetings a week.

Q Do you have any grown children, Mrs. Noonan?

A. Yes, I do.

Q What are their occupations?

A. Well, one of them works for Thurber Electric and answering the telephone and that is a daughter.

Q Um-hmm. Do you have other grown children?

A. I have only one child.

Q I see. Do you know any of the attorneys who are appearing in this case?

A. No, I don't.

Q Do you know any of your friends or close associates or relatives who know any of the attorneys or are associated with any of the attorneys in this case?

A. Not that I know of.

Q Have you or any one of your close friends or relatives ever been involved in any legal difficulties in a criminal or civil case?

A. No.

Q Have you ever been a witness in a criminal case?

A. No, I haven't.

Q Have you ever had any jury experience before?

1 A. No, I haven't.

2 Q. Do you do any volunteer work, Mrs. Noonan?

3 A. Just my church and Sunday school work and, maybe,

4 the Heart Fund, the crusades.

5 Q. I see. You are fairly active in your church

6 volunteer work?

7 A. Very -- yes, I take a definite part.

8 Q. What kinds of things do you work in?

9 A. Well, I'm on the Board and I am a Sunday school

10 teacher and I teach juniors and I'm -- and take care of the

11 Sunday school money and secretary and teacher and Sunday school.

12 Q. If the evidence in this case revealed to you, as

13 the trial progressed, that the victims were not nice people,

14 people who were killed were people that you wouldn't want to

15 associate with at all; would that, in your mind, tend to

16 excuse murder, or to make it less serious in your mind?

17 A. Oh, no.

18 Q. Have you ever discussed the case with anybody

19 else who has an opinion, or who has expressed an opinion about

20 whether the defendant is guilty or innocent?

21 A. No, I haven't.

22 MR. THOMAS: That's all, pass Mrs. Noonan for cause,

23 Your Honor.

24

25

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mrs. Noonan, have you been unfortunate enough to have come up against persons who use narcotics or drugs?

A No, I haven't.

Q No part of that type --

A No, I haven't.

Q -- circumstances ever turned up?

A No, that's correct.

Q Has any member of your family, close friends, ever been a victim of a crime committed against them?

A No, no.

Q And, with your strong affiliation with your church, do you personally, yourself, believe in God?

A I definitely do.

Q And do you believe that Satan exists?

A I certainly do.

Q Now, in answering the questions you've stated that the violence that is depicted on TV and in program appalls you?

A Yes, it doesn't make me a better person.

Q But, if reading the paper you do realize that violence does exist in real life too?

A Oh, yes, definitely.

Q And if, during the course of this trial, testimony

1 and documentary evidence, written instruments, come out with  
2 vulgar, crude, coarse, profanity, will that, in itself, not  
3 only appall you, but will it tend to prejudice you against the  
4 defendant?

5 A. I wouldn't be happy about it, but it will not  
6 prejudice me.

7 Q. And the mere fact that part of the evidence may be  
8 color photographs depicting the victims, deceased victims, and  
9 the photographs are somewhat grotesque, will that appall you or  
10 -- and thereby cause some prejudice?

11 A. No.

12 Q. In other words, what you are stating, you will  
13 listen closely to the facts of the case themselves and weigh  
14 them carefully and not allow this inflammatory-type of  
15 material to affect your judgment?

16 A. That's correct.

17 Q. Mrs. Noonan, you know yourself better than anyone  
18 else in this courtroom knows you, you know your personality  
19 and your make-up. Is there anything that you feel in your  
20 make-up that would disqualify you to sit as a juror in this  
21 case?

22 A. No, I would definitely try to be as honest and  
23 unprejudiced as I possibly could be.

24 Q. And provide a fair trial?

25 A. As -- yes, I would, that's right.

1 MR. ROBINSON: Pass Mrs. Noonan, Your Honor.

2 THE COURT: Thank you, Mrs. Noonan, we'll ask you to  
3 step back in the jury room and remain there until you get  
4 further instructions; if you will please not discuss the  
5 questioning that you have been subjected to here with any of  
6 the other members of the panel that come in.

7 Court advises Counsel that the next juror drawn  
8 is number 13, William B. Cecil.

9 Bring Mr. Cecil in.

10

11 WILLIAM B. CECIL,

12 a prospective juror herein, having been first duly sworn, took  
13 the stand and testified as follows:

14

15 THE COURT: Mr. Cecil, if you would just relax  
16 there a minute we need to do something else and then we'll  
17 be with you.

18 The Clerk will draw another name, please.

19

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q Mr. Cecil, I'm going to ask you a few questions  
23 first and then the attorneys will want to ask you a few.  
24 Everything we state here has to be taken down by the Court  
25 Reporter so if you will please answer audibly and not just nod

1 your head and answer loudly enough for him to hear you so he  
2 can write down what we say.

3 A. Okay.

4 Q. I want to visit with you a few minutes about the  
5 procedure we'll follow once the jury is selected and we start  
6 taking evidence in this case.

7 After the jury is completely sworn and selected  
8 and sworn to try the cause and we start taking evidence, the  
9 jury will be what we call sequestered; this means you won't  
10 be able to leave during recesses to go home, you will be  
11 housed in a motel, we've made reservations at the Stardust for  
12 this, and take your meals at restaurants under the supervision  
13 of the Bailiffs. That will continue until the trial is over.  
14 Do you understand that procedure?

15 A. Yes, sir.

16 Q. We're wondering whether this will, as far as your  
17 personal life is concerned, your home situation or your work,  
18 would cause an impossible situation or extreme hardship as far  
19 as you are concerned?

20 We recognize, all of us, that it will be  
21 inconvenient for all the jurors and that's why we probably  
22 can't excuse a juror just because it's inconvenient. But, if  
23 it does create an extreme hardship or is an impossible  
24 situation, just can't meet that, we could consider that.

25 Now, anything that you are facing with that that

1 would create a real problem for you?

2 A. No, sir.

3 Q. You can handle this situation?

4 A. Yes, sir.

5 Q. Turning to another subject, then, Mr. Cecil, under  
6 our system of justice and philosophy of law a defendant who is  
7 accused of a crime is presumed to be innocent until his guilt  
8 is established beyond a reasonable doubt by the State.

9 Now, I'm going to define these terms for you  
10 later on in the trial, more in detail. But, what it means  
11 for the present purposes, I think, as I just explained to you,  
12 this means that the defendant isn't required to do anything to  
13 prove his innocence. In other words, the law cloaks him with  
14 a cloak of innocence at the beginning of a trial like this and  
15 this continues until he's proved guilty beyond a reasonable  
16 doubt by the State.

17 So, what this means is, as a practical matter  
18 right now, is that Mr. Creech, the defendant, is entitled to  
19 be considered innocent. Is there anything that would prevent  
20 you from giving him the full benefit of this principle right  
21 now at this stage of the proceeding as --

22 A. No, sir.

23 Q. Have you read or heard anything about this case  
24 in the newspapers or radio or TV or from friends, that purport  
25 to be facts about the case, or about Mr. Creech?

1           A.    I heard it over the TV, yes, sir, when it first  
2 started.

3           Q.    Can you tell us -- want to test your memory of  
4 what you actually remember hearing about this case.

5                   Mr. Cecil, can you tell us what purported facts  
6 you heard about the case or about Mr. Creech?

7           A.    I just -- the way I understood it, he had -- two  
8 guys picked him up and he took the vehicle, that's what --  
9 that's the best I understood it.

10          Q.    Fine. Do you remember any other facts at all,  
11 or purported facts that were explained in these stories; either  
12 about Mr. Creech or about the case?

13          A.    No, sir.

14          Q.    That's the extent of it?

15          A.    Yes, sir, far as I remember.

16          Q.    That's all we can test is what you actually  
17 remember. Right now that's all you can remember about the  
18 case?

19          A.    Yes, sir.

20          Q.    Based on those few facts that you have heard, have  
21 you formed any opinion as to the guilt or innocence of the  
22 defendant at this time?

23          A.    No, sir, I couldn't judge because I couldn't see  
24 it and nothing.

25          Q.    So, you feel your mind is in such a condition that

1 you can give him the benefit of this presumption of innocence?

2 A. Yes, sir.

3 Q I want to turn to another matter that jurors need  
4 to be aware of and find out your feeling on this subject.

5 Under our Idaho law, neither the jury nor the  
6 Court has any discretion as to the penalty to be imposed for  
7 First Degree Murder; which is the charge here. Our legislature,  
8 State Legislature, has passed a law that makes the death  
9 penalty mandatory for a person convicted of First Degree  
10 Murder; this means that the only subject the jury would vote on  
11 is guilt or innocence of that charge and not about the penalty.

12 I, likewise, the Judge hasn't got anything to say  
13 about the penalty. The legislature has taken that out of our  
14 hands. Do you understand that?

15 A. Yes, sir.

16 Q All right. Knowing this, do you have any  
17 personal beliefs or feelings about the death penalty which  
18 would prevent you from fairly considering the evidence and  
19 the law bearing on the charge of First Degree Murder?

20 A. Well, my belief -- I don't feel he should have  
21 death.

22 Q In other words, you are personally opposed to  
23 the death penalty?

24 A. Yes, sir.

25 Q All right. Understanding, of course, that you

1 will not have to vote directly on the death penalty but knowing  
2 if you vote for First Degree Murder that that penalty would  
3 follow automatically if all the jurors are convinced of that --

4 A. Yes, sir.

5 Q. -- guilt?

6 A. I understand.

7 Q. Do you think your personal belief would keep you  
8 from voting for a guilty verdict of First Degree Murder just  
9 because the penalty, even though you really believe that he  
10 was guilty?

11 A. Yes, sir, it would.

12 Q. You think it would?

13 A. Yes, sir.

14 Q. Just to tie it down, let me phrase it just a  
15 little -- it's the same question, but in a little different  
16 wording, Mr. Cecil, to make sure we don't have any  
17 misunderstanding.

18 Would your personal objection to the death penalty,  
19 then, prevent you from finding the defendant guilty of First  
20 Degree Murder under any state of the evidence?

21 A. No, sir, it wouldn't.

22 Q. It wouldn't?

23 A. No, sir.

24 Q. You think the evidence could be such that you could  
25 find him guilty?

1 A Yes, sir.

2 Q In spite of the fact that you knew the death

3 penalty would follow automatically?

4 A I think so.

5 Q I -- maybe you misunderstood one of my last

6 questions, or I misunderstood your answer.

7 Let me put it to you again, then. Say, bearing

8 in mind your personal feeling against the death penalty, would

9 that prevent you from voting guilty of First Degree Murder under

10 any state of the evidence?

11 A Yes, sir, if I was -- figure my vote was going to

12 sentence him to death, I would have to vote --

13 Q Well, as I've explained to you, it -- if all the

14 jurors voted for First Degree Murder, the death penalty would

15 fall automatically.

16 A Yes, sir.

17 Q Now, you say under that condition you just could

18 not, under any condition, vote for guilty; is that what you are

19 saying?

20 A That's right, sir.

21 THE COURT: Any Counsel resist the challenge?

22 MR. ROBINSON: I resist.

23 THE COURT: Do you want to ask further questions?

24 MR. ROBINSON: No, Your Honor.

25 MR. THOMAS: We challenge.

1 MR. REMAKLUS: We challenge.  
2 THE COURT: All right, I'm going to grant the challenge.  
3 We express appreciation for your frankness,  
4 Mr. Cecil, on this matter and we will excuse you from further  
5 service in this case. You are subject to call again on other  
6 cases if the Jury Commissioner calls you.  
7 We appreciate your time you have spent here.  
8 THE WITNESS: Thank you.  
9 THE COURT: You may leave at this time.  
10 The next juror is Alice C. Gilman, number 32.  
11  
12 ALICE C. GILMAN,  
13 a prospective juror herein, having been first duly sworn, took  
14 the stand and testified as follows:  
15  
16 VOIR DIRE EXAMINATION  
17 BY THE COURT:  
18 Q Mrs. Gilman, I want to ask you a few questions  
19 and then the attorneys will want to ask you a few questions.  
20 Everything we say has to be taken down by the Court Reporter  
21 so if you will answer audibly and not just nod your head --  
22 A. Okay.  
23 Q -- and answer loudly enough for him to hear you,  
24 please.  
25 A. Okay.

1 Q I want to visit with you for just a minute about  
2 the procedure we'll follow with the jury once the trial starts  
3 as far as taking evidence.

4 When the jury is completely selected and sworn to  
5 try the cause and we start taking testimony, the jury won't  
6 be able to go home during recesses at night. We do what we  
7 call sequester the jury and that means the jurors will be  
8 housed at a motel, at the Stardust, for this, and take our  
9 meals in restaurants under the supervision of the Bailiffs.  
10 Do you understand that procedure?

11 A Yes.

12 Q All right. Wondering if there's anything in your  
13 personal life, your home or work situation, that would make it  
14 impossible for you to do this, or create an extreme hardship?  
15 I know it's going to be inconvenient for all jurors, but I need  
16 to find out whether there's anything particular in your  
17 situation that would make this just impossible for you to do?

18 A No.

19 Q You feel you could handle that situation all right?

20 A If I have to.

21 Q I probably didn't tell you that we estimate that  
22 the trial will take about three weeks. We don't know for sure,  
23 but that's a -- our best estimate. Does that make a difference?  
24 Would you still be able to live with that?

25 A So far as I know.

1 Q All right. Anything you have a question about in  
2 that regard?

3 A Well, the only thing is that I have to just  
4 strain my ears to hear every word. I don't hear as well as  
5 I should sometimes. Certain words don't register and I have  
6 to ask two or three times.

7 Q I've found from experience that people have a  
8 harder time hearing me than almost anyone else in the courtroom.  
9 Do you have -- have you had a hard time hearing me?

10 A Yes.

11 Q You have? All right. The jury will be seated in  
12 a box like that (indicating) you'd be about that far away from  
13 the witnesses. The witness will be seated where you are now.  
14 Do you feel that when they are that far away you might have a  
15 problem hearing their testimony?

16 A Well, it's possible.

17 Q Do you think it might make you nervous and upset  
18 straining to hear, or isn't your problem --

19 A Probably not.

20 Q Probably not? When we were over at the -- across  
21 the street at the Courthouse yesterday, were you able to hear  
22 the things I said up from the bench?

23 A No.

24 Q You weren't able to hear those?

25 A I could hear a word now and then, but I could not

1 hear -- I didn't catch the names of any of the attorneys or  
2 the people that were mentioned.

3 MR. ROBINSON: Defense would stipulate, Your Honor.

4 MR. THOMAS: Yes, Your Honor.

5 MR. REMAKLUS: Yes.

6 THE COURT: Well, probably could hear all right,  
7 Mrs. Gilman, but I think maybe to keep you from straining and  
8 taking a chance that you might miss something we'll excuse you  
9 for this occasion.

10 THE WITNESS: Okay.

11 THE COURT: We appreciate your being -- explaining this  
12 problem to us and appreciate the time you spent here and we'll  
13 ask you not to discuss the case with other jurors.

14 THE WITNESS: Okay.

15 THE COURT: We've drawn number 11; which is  
16 Howard Byrd.

17 (Brief delay.)

18 THE COURT: We slipped up and didn't draw our extra  
19 name last time.

20 We'll just take a short recess until we get the  
21 next juror.

22 (Recess taken.)

23 THE COURT: Bring in Mr. Byrd.

24 Counsel ready to proceed?

25 MR. ROBINSON: Yes, Your Honor.

1 MR. REMAKLUS: Yes, Your Honor.

2 THE COURT: This is number 11, Mr. Byrd.

3

4 HOWARD R. BYRD,

5 a prospective juror herein, having been first duly sworn, took  
6 the stand and testified as follows:

7

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q Mr. Byrd, I want to ask you a few questions and  
11 then the attorneys will want to ask you a few. Everything we  
12 say the Court Reporter has to take down so if you will please  
13 answer audibly and loudly enough for him to hear you we'd  
14 appreciate it.

15 I want to visit with you a few minutes about  
16 procedure we're going to use for the jury once we start taking  
17 evidence in the trial. Once the jury is completely selected  
18 and sworn to try the case and start taking evidence, the jury  
19 won't be able to go home at evening recesses and they'll have  
20 to take their meals at restaurants under the supervision of the  
21 Bailiffs and be housed in the motel. We have made arrangements  
22 at the Stardust for this.

23 We don't know how long the trial will last, our  
24 best estimate right now is about three weeks, but could go  
25 either way; you understand? It's a reasonable estimate.

1 I'm wondering, under this procedure if there's  
2 anything in your personal life or home situation or work  
3 situation that would make it impossible for you to do this, or  
4 create an extreme hardship for you. We know it's going to be  
5 inconvenient for all the jurors so no use talking about just  
6 inconvenience. But, if there's some special situation you are  
7 faced with that would make it impossible, or create a real  
8 hardship, we'd like to hear about it.

9 A. Well, the only drawback is my hearing and, also,  
10 I have what they call jaundice of the liver. I haven't had no  
11 flare-ups though for over a year on it, but it comes and goes.

12 Q. Comes and goes? When you have a flare-up, what  
13 happens? Do you have to --

14 A. I'm in a lot of pain and usually have to go to  
15 the hospital.

16 Q. I see.

17 A. It was caused from a gallstone and my liver is  
18 enlarged.

19 Q. Have you had one a year ago, about?

20 A. It's been three years now since I've had my last  
21 surgery for it.

22 Q. And how long before that did you have one?

23 A. Well, it was about -- the last attack before that  
24 was about two and a half years before that and I didn't need  
25 surgery then.

1 Q You think you're about due for one, then; is that  
2 what you are telling us?

3 A It's hard to say. I can't -- I couldn't tell when  
4 they comes or goes.

5 Q About your hearing. Were you able to hear me over  
6 in the courtroom when we were there?

7 A Not really. I could get words and put them  
8 together, that's about the only way.

9 Q I found from experience that I'm about as hard to  
10 hear as anyone. People can hear --

11 A Voices, some voices carry a lot better than others.

12 Q Yes. Mine doesn't carry very well. Do you have  
13 a hard time hearing me right now?

14 A I can hear you faintly.

15 Q Just faintly?

16 A As long as I watch you I'm pretty good.

17 Q Apparently lip reading, then?

18 A Well, not really. I've never taken lip reading,  
19 but I've kind of, over a period of time, I think it comes  
20 naturally.

21 MR. ROBINSON: I'd so stipulate, Your Honor.

22 MR. REMAKLUS: Yes, Your Honor.

23 THE COURT: I think maybe, under the circumstances in  
24 this case, we will excuse you, then, from this trial for both  
25 those problems.

1 THE WITNESS: I wouldn't want to be able to be there  
2 and not be able to hear.

3 THE COURT: Yes, I appreciate your explaining that to  
4 us, Mr. Byrd. We appreciate your appearing here and thank you  
5 for the time you spent.

6 THE WITNESS: Thank you.

7 THE COURT: You will be excused.

8 All right, the next juror is number 60,  
9 Maxine Karst.

10 I'll have the Clerk draw another name.

11  
12 MAXINE ELNORA KARST,  
13 a prospective juror herein, having been first duly sworn, took  
14 the stand and testified as follows:

15  
16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q Mrs. Karst?

19 A Yes.

20 Q Have a seat there.

21 I'm going to ask you a few questions first,  
22 Mrs. Karst, and then the attorneys will each want to ask you  
23 some questions. Everything we say here has to be taken down  
24 by the Court Reporter so if you'll please answer audibly and  
25 loudly enough for him to hear you and don't just nod your head.

1 He can't get those in the record.

2 I want to visit with you first a few minutes just  
3 about the procedure we'll follow about the jury once we start  
4 the trial as far as taking evidence. When a jury is completely  
5 selected and sworn to try the case and we do proceed with taking  
6 evidence the jury won't be able to go home at recesses or  
7 separate at recesses. We do what we call sequester the jury;  
8 which means that the jurors would be housed in a motel. We  
9 have made arrangements for that at the Stardust. We'll take  
10 meals at restaurants under the direction of the Bailiffs and  
11 this is going on until the trial is ended.

12 Now, we estimate the trial will take about three  
13 weeks. Of course, none of us know for sure, but that's the  
14 best guess we can make about it.

15 Understanding this procedure, is there anything  
16 in your personal life, your home situation or work, if you  
17 work, that would make this impossible for you to do, or render  
18 -- create an extreme hardship. We know at the outset it will  
19 be inconvenient for all the jurors so we don't want to talk  
20 about just inconvenience, but if there's some special problem  
21 that you face, we'd like to know about it.

22 A. I have six children at home.

23 Q. Could you give me their ages, or at least the  
24 space -- what's the youngest and oldest?

25 A. From 17 to six.

1 Q Seventeen to six? They are all in school, then?  
2 A Yes.  
3 Q Is their father working during the day?  
4 A Yes, he gets home about quarter after three,  
5 three-thirty.  
6 Q Do you feel they could get along probably -- I'm  
7 sure they'd miss you, they wouldn't get along as well as with  
8 you there, but could they get along? Do you think with him  
9 there -- can he be there every night?  
10 A Oh, yeah, he can be there. He'd be there in the  
11 mornings that I'd really worry about --  
12 Q Getting them off to school and work?  
13 Does he have to leave before they leave?  
14 A Oh, yeah, he leaves at quarter to six and they  
15 they wouldn't have to leave until eight.  
16 Q Is the seventeen-year old a boy or girl?  
17 A Girl; three oldest are girls. There's a 17, 15  
18 and -- no, Laura is not 17, she's 16 -- wait a minute, she's  
19 17. This is sort of a trying situation here. There's -- the  
20 next one is 15 and then the next one is 13. Then, the littlest  
21 ones are boys, nine, eight and six.  
22 Q Are the girls pretty responsible as far as cooking  
23 and taking care of --  
24 A Yes, they are.  
25 Q Do they have to fix lunches or do they come home

1 for lunch?

2 A No, they have -- fix lunches.

3 Q It would also -- see, you can't go home, it  
4 doesn't mean you'll be cut off from all communication. You can  
5 send messages through the Bailiffs about personal matters and  
6 have messages come in about personal matters. The only thing,  
7 you are under oath not to discuss the case or let anybody talk  
8 to you about the case. You are not barred from having messages  
9 about personal matters at home or things like that.

10 A There's only one thing that -- would this be  
11 starting -- we're -- we are hoping that our three daughters  
12 from Seattle were coming over this weekend and we were wanting  
13 to have the family picture taken. Our family hasn't been  
14 together for five years and our daughter's home from the Army  
15 now. It's not positive that they are going to be able to, it's  
16 going to depend on the one girl getting off of work, but --

17 Q Well, if they could come over to the motel and  
18 stand out on the lawn under the supervision of the Bailiffs I  
19 think they could take a picture. But, the Bailiffs will have  
20 to supervise it; probably couldn't let you go home for that  
21 purpose.

22 A I say, I don't know, I don't know, it isn't really  
23 sure because she hasn't called and let us know for sure.

24 Q Well, I know you don't want to do this but, what  
25 is your feeling? Do you think they could get by without you?

1 Or do you feel --

2 A. I guess they could if they had to.

3 Q. Let me --

4 A. Because my husband is responsible enough, he, you  
5 know, like I say, it would be the mornings that I would worry  
6 about the most, like all the kids, they fight.

7 Q. They fight?

8 A. Mine aren't any different than anybody else's.

9 Q. Let me ask you this, I guess this is what we're  
10 concerned primarily about.

11 Would this create so much worry in your mind that  
12 you just couldn't concentrate on the case or the testimony  
13 while the case was being tried? You'd always be thinking about  
14 what was going on at home, what was happening?

15 A. I don't think so. I think I could.

16 THE COURT: Well, how do Counsel feel? Do you want to --

17 MR. ROBINSON: Your Honor, I have mixed emotions. I  
18 see from Mrs. Karst's questionnaire, the six are six of 15  
19 children that she's had and I would find her a very favorable  
20 juror.

21 THE COURT: Mr. Remaklus?

22 MR. REMAKLUS: I have no objection to having Mrs. Karst  
23 being excused, Your Honor. I think she has problems.

24 MR. ROBINSON: I will join, Your Honor.

25 THE COURT: Well, I think she would be a good juror too.

1           Mrs. Karst, I guess if you feel that would be a  
2 problem we'll go ahead and excuse you.

3           Thank you for your appearance and the time you've  
4 spent over here. If you please wouldn't discuss with the other  
5 members of the panel your questions here and things we brought  
6 up.

7           You will be subject to call on other cases by the  
8 Jury Commissioner if they need you.

9           THE WITNESS: Right.

10          THE COURT: All right, you may be excused at this time.

11          THE WITNESS: Thank you.

12          THE COURT: The next juror is number 16, Nancy Church.

13  
14                               NANCY C. CHURCH,  
15 a prospective juror herein, having been first duly sworn, took  
16 the stand and testified as follows:

17  
18          THE COURT: Relax a minute, Mrs. Church, we've got --  
19 would you draw another number, please.

20  
21                               VOIR DIRE EXAMINATION

22 BY THE COURT:

23           Q     Mrs. Church, I'm going to ask you a few questions  
24 and, then, the attorneys will each want to ask you some  
25 questions. Everything we say here -- this Court Reporter

1 sitting here has to take down on his machine everything, so if  
2 you will please speak loudly enough so he can hear you and  
3 so he can write down what you say we'd appreciate that.

4 I want to visit with you for a few minutes about  
5 the way -- the procedure we'll follow in the trial, when the  
6 trial starts as far as taking evidence with the jury so we can  
7 see whether you have any problems that you couldn't handle that  
8 kind of a situation.

9 Once the jury is completely selected and sworn to  
10 try the cause and we start taking evidence the jurors will be  
11 what we call sequestered; that means they won't be able to go  
12 home in the evening or recesses. They will be housed at a motel  
13 and eat their meals in restaurants under the direction of the  
14 Bailiffs.

15 As far as we can tell right now the trial will last  
16 about three weeks, we don't know for sure, but that's our best  
17 estimate at this time.

18 Is there anything in your personal life, your  
19 home situation or work, if you work, that would make this  
20 impossible for you to do or create an extreme hardship? We  
21 know it will be inconvenient for all the jurors --

22 A. Yes.

23 Q. -- so we don't talk just about inconvenience, but  
24 if there is some real serious problem that you face because of  
25 this, we'd like to know about it.

1           A.     I really don't, I watch my little boy because my  
2 mother-in-law is sick and my mother works and I don't have any --  
3 I don't have a babysitter and I don't have anybody watching.

4           Q.     How old is he?

5           A.     He's five.

6           Q.     Five?

7           A.     And I have to work for my mom because she's got  
8 to go to the doctor's, she's supposed to went today and I was  
9 supposed to work for her. I have to fill in for her every once  
10 in awhile.

11          Q.     So, she isn't available to babysit because  
12 she works, right?

13          A.     Yeah, and then she's got to go to the doctor and  
14 I've got to work for her too.

15          Q.     And you don't have any other family here that  
16 could help you with the babysitting?

17          A.     Well, I have got brothers, but --

18          Q.     You wouldn't --

19          A.     They don't really care about babysitting.

20          Q.     And you don't have any babysitter that you use on  
21 a regular basis, do it steadily like this?

22          A.     Just my husband's niece and she's not very  
23 dependable.

24          Q.     Your husband's niece?

25          A.     Um-hmm, she's watching him today.

1 Q Well --

2 MR. ROBINSON: I'd stipulate, Your Honor.

3 MR. REMAKLUS: Yes, we'd agree that Mrs. Church may be  
4 excused.

5 THE COURT: All right, we'll excuse you, then. We  
6 appreciate the time you've spent here and the problems. You  
7 will be subject to call in the future for further jury service  
8 if they need you, but the Jury Commissioner will call you for  
9 that.

10 I will ask you not to discuss the questioning  
11 with other members of the panel if you happen to run into them,  
12 Mrs. Church.

13 THE WITNESS: Okay.

14 THE COURT: The next juror is number 119,  
15 Robert Williamson.

16 I'll ask the Clerk to draw another name.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 ROBERT D. WILLIAMSON,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Mr. Williamson, I'm going to ask you some  
8 questions first and then the attorneys will each want to ask you  
9 some questions. All these questions and your answers have to  
10 be written down by the Court Reporter so you will have to  
11 answer loudly enough for him to hear you --

12 A Yeah, okay.

13 Q -- so he can write it down.

14 I want to visit with you first just a few minutes  
15 about the procedure we'll follow with the jury once the trial  
16 starts as far as taking evidence. Once the jury is completely  
17 selected and sworn to try the cause and start taking evidence  
18 the jury won't be able to separate and go home at nights for  
19 recesses. We will be housing the jurors at the Stardust Motel,  
20 and take your meals at restaurants under the supervision of  
21 the Bailiffs.

22 None of us know right now how long the trial will  
23 last, but our best guess is estimated at about three weeks;  
24 which is probably a reasonable estimate.

25 The first thing we need to know is whether, under

1 this proceeding, if there's anything in your personal life or  
2 home situation, work situation, that would make this impossible  
3 for you to do, or create an extreme hardship. We know it will  
4 be inconvenient so we don't want to talk about that, but if  
5 there's anything particularly that would make this a severe  
6 hardship for you we'd like to hear about it right now.

7 A. No, I don't think it would be a severe hardship.  
8 I'm a teacher and my boss, probably, would be unhappy about  
9 that and I have two very young children; my wife might be a  
10 little unhappy, but it's not a severe hardship, I don't think.

11 Q. The school district will have a substitute, will  
12 they?

13 A. Oh, yeah, they'll have to hire --

14 Q. I'm sure they will.

15 A. Yes. Oh, yeah.

16 Q. Your wife doesn't work? She stays home with the  
17 children?

18 A. No, sir, she doesn't work.

19 Q. What?

20 A. She does not work.

21 Q. Okay. You will be able to send messages out and  
22 get messages in as far as your checking with the family to see  
23 that things are all right. Your oath will simply preclude you  
24 from having any communications about the case, not for getting  
25 messages. Everything will have to go through the Bailiffs.

1 A. Um-hmm.

2 Q. All right. We'll turn to another subject, then,  
3 Mr. Williamson.

4 Under our system of justice and philosophy of law  
5 a defendant in a criminal action is presumed to be innocent  
6 until his guilt is proved beyond a reasonable doubt by the  
7 Prosecution. This particular term will be further explained  
8 later on in the trial and further instructions, but for the  
9 present purposes it's enough, I think, to just explain what  
10 this means is the defendant doesn't have to come forth with  
11 any evidence to prove his innocence. The law cloaks him with  
12 a -- covers him with a cloak of innocence at that stage of the  
13 proceeding without any evidence being produced or anything.

14 What it means is that he's to be considered  
15 innocent at this stage of the proceeding. Now, I'm wondering  
16 right at the outset if there's anything that would prevent you  
17 from giving Mr. Creech the full benefit of this principle and  
18 consider him innocent right now?

19 A. Nothing at all.

20 Q. You are able to do that? You don't have any  
21 quarrel with that principle?

22 A. No.

23 Q. Have you read or heard anything about this case  
24 in the newspapers or radio or TV or gossip from any other  
25 source; particularly any purported facts about Mr. Creech or

1 about the case itself?

2 A. No more than what you told us just yesterday.

3 Q. I meant other than that.

4 A. No.

5 Q. That's the only thing, what you heard in court  
6 yesterday?

7 A. Yeah.

8 Q. So, you don't -- you haven't heard any purported  
9 facts about this case at all, then, other than what you  
10 learned in court?

11 A. No, I heard a radio newscast but they didn't say  
12 any more -- I didn't learn any more from it than what you  
13 said just the other day, no facts.

14 Q. You don't feel you learned any additional facts?

15 A. No additional facts than what you told us.

16 Q. I want to discuss one other matter that we feel  
17 should be brought to the attention of the jurors, Mr. Williamson?

18 Under our Idaho law neither the jury nor the  
19 Judge has any discretion as far as the penalty to be imposed  
20 for First Degree Murder. Our legislature has taken that out of  
21 the hands of both the jury and the Judge. The legislature has  
22 provided for an automatic and mandatory death penalty in case  
23 of a conviction of First Degree Murder.

24 Now -- which means the only question the jurors  
25 will be voting on, really, is guilt or innocence of First

1 Degree Murder, or other lesser offenses.

2 Now, knowing this to be the law, do you have any  
3 personal beliefs or feelings about the death penalty which would  
4 prevent you from even entertaining consideration of guilt of  
5 First Degree Murder if that was proved beyond a reasonable  
6 doubt?

7 A. I don't believe in the death penalty.

8 Q. You think that personal opposition to the death  
9 penalty would prevent you from voting for First Degree Murder  
10 under any state of the evidence, then?

11 A. Well, if I knew that was the only way they are  
12 going to go, you know, I would hear the case and be -- try to  
13 be just in my -- you know, my voting for innocent or guilt.  
14 But, I do not believe in the death penalty.

15 Q. Well, this is the test that I'm trying to get at,  
16 Mr. Williamson. There's nothing objectionable, per se, about  
17 being against the death penalty. What we need to find out is  
18 whether your feeling is so strong that it would just prevent  
19 you from even considering, under any state of the evidence,  
20 voting for guilty knowing that -- you, of course, wouldn't have  
21 to vote on the penalty. The legislature has done that. But,  
22 still, knowing that if the jurors agree that First Degree  
23 Murder has been proved beyond a reasonable doubt the death  
24 penalty will be mandatory and automatic, would that just keep  
25 you from voting guilty no matter what the State proved in the

1 case?

2 A. It just may, yes, because I am strongly against  
3 the death penalty.

4 Q. Well, I know it's hard to project yourself into  
5 that situation, Mr. Williamson, but we about have to have you  
6 do that and perhaps state more definitely whether you think it  
7 would or wouldn't.

8 A. Well, I think it probably would prejudice my  
9 opinion if I knew the death penalty would be what would come  
10 out of a guilty decision.

11 Q. You think you just couldn't vote for guilty under  
12 circumstances?

13 A. No, I don't think so because I'm strong against  
14 the death sentence.

15 MR. THOMAS: Challenge for cause.

16 THE COURT: Do you want to resist the challenge?

17 MR. ROBINSON: No, Your Honor.

18 THE COURT: All right, we appreciate your expression  
19 and frankness here, Mr. Williamson, and we will excuse you  
20 under the circumstances.

21 THE WITNESS: Okay.

22 THE COURT: We appreciate the time you've spent here.  
23 We'd ask you not to discuss the questioning here with any other  
24 jury panel member.

25 THE WITNESS: Okay.

1 THE COURT: You will be subject to call on other  
2 trials if the Jury Commissioner calls you, but we don't have  
3 any definite date. You may be excused at this time.

4 THE WITNESS: Thank you.

5 THE COURT: The next juror is 57, Ida Johnson.

6 I'll have the Clerk draw another number.

7  
8 IDA M. JOHNSON,  
9 a prospective juror herein, having been first duly sworn, took  
10 the stand and testified as follows:

11  
12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q Mrs. Johnson, I'm going to ask you a few  
15 questions and then the attorneys will want to ask you a few  
16 after I get through. Everything we say the Court Reporter has  
17 to report here, so it will be necessary for you to answer  
18 audibly and loudly enough for him to hear.

19 A All right.

20 Q I want to visit with you for just a few minutes  
21 about the procedure we'll follow with the jury once the case  
22 starts as far as the actual hearing of evidence so that we can  
23 see whether this is going to cause some real problems for you  
24 if you are on the jury.

25 Once the jury is fully chosen and sworn to try the

1 case and they start receiving evidence and the jury will be what  
2 we call sequestered; which means you won't be able to go home  
3 at night, at recesses or separate during recesses and be housed  
4 at the Stardust Motel and take meals at the restaurants under  
5 the direct supervision of the Bailiffs. This will go on until  
6 the case is over.

7 We estimate right now the case might last three  
8 weeks, but don't know for sure. But, that's the best estimate  
9 we can make and that's, possibly, a reasonable estimate.

10 Bearing this procedure in mind is there anything  
11 in your personal life or home situation or your work that would  
12 prevent you from doing this, or make it impossible or at least  
13 a severe hardship for you to serve under these conditions?  
14 We know it would be inconvenient.

15 A. Well, it would be inconvenient but I'm all by  
16 myself and, so, there are things that I have to do, you know,  
17 at home that nobody else can do. I'm a widow but I'm certain  
18 that if it didn't last more than three weeks --

19 Q. Do you have animals to take care of or --

20 A. No.

21 Q. -- anything like that?

22 A. I have a mother in the nursing home that I have  
23 to, you know, sort of watch over, but that can be --

24 Q. If you needed to communicate about personal things  
25 like that with your next door neighbors or friends you can do

1 that through the Bailiffs.

2 A. Oh, um-hmm.

3 Q. But, you couldn't leave to go home.

4 A. I see.

5 Q. It sounds like, perhaps, you could manage if you  
6 had to?

7 A. I could if I had to.

8 Q. All right. Under our system of justice,  
9 Mrs. Johnson, and philosophy of law, a defendant in a criminal  
10 action is presumed to be innocent until his guilt is proven  
11 beyond a reasonable doubt by the Prosecution. I will explain  
12 these terms more fully later on in the trial and instructions.  
13 But, for the purposes, probably this is enough to understand  
14 that what this means is the defendant doesn't have to do anything  
15 to prove his innocence or any evidence to prove his innocence  
16 because the law cloaks him with this presumption of innocence  
17 at this stage of the proceeding and it means that right now as  
18 he sits in court today that we presume he's innocent.

19 I'm wondering if you are able to give him the full  
20 benefits of this principle and consider him innocent at this  
21 stage of the proceeding?

22 A. I don't know why not.

23 Q. Okay. You don't have any quarrel with this  
24 general principle of law, then?

25 A. No.

1 Q Have you read or heard anything about this case  
2 in the newspapers or radio or TV or gossip from other people  
3 that purported to know facts about it?

4 A Yes, I don't know if they are facts. I've read  
5 what was in the papers.

6 Q Well, have you read or heard anything that  
7 purports to be facts; either about Mr. Creech or about the  
8 case; other than what you've heard here in court?

9 A Well, I don't think it's facts. I think it's  
10 gossip, said about some sort of a cult or something that --

11 Q Can you tell us what you've heard about that?

12 A That's all I heard; that it was -- there was some  
13 sort of cult that he belonged to.

14 Q That he belonged to?

15 A Yeah, that was supposed to be in this area at the  
16 time.

17 Q I see.

18 A I mean that was purely gossip.

19 Q Is that the only purported facts that you heard  
20 about the case?

21 A Other than it was transferred from somewhere and  
22 -- Southern Idaho up here.

23 Q Anything else at all? I know we're asking you to --

24 A I don't know because this was so long ago when I  
25 did read it.

1 Q Stretch your memory, we just -- that's all we want  
2 is what you can remember as you sit here today.

3 A A year ago is when I had read about it and I  
4 don't really remember any facts.

5 Q Does this thing you have heard about this cult,  
6 does it cause you to have any question about considering  
7 Mr. Creech innocent right now?

8 A No, it was just a little frightening you -- I  
9 don't know what a cult is.

10 Q Have you formed any opinion as to his guilt or  
11 innocence, based on what you've heard?

12 A No.

13 Q You are willing to afford him this presumption of  
14 innocence?

15 A Right.

16 Q Under our Idaho law, Mrs. Johnson, neither the  
17 jury nor the Judge has any discretion as to the penalty to be  
18 imposed for First Degree Murder, our legislature has fixed the  
19 penalty and taken it out of the hands of the jury and the  
20 Judge. The legislature has fixed the penalty -- death penalty,  
21 made it mandatory for First Degree Murder; which, of course, is  
22 the charge here.

23 Now, understanding that that's what the law is,  
24 do you have any personal beliefs or feelings about the death  
25 penalty that would prevent you from considering this charge just

1 because you know that it carries that penalty?

2 A. I didn't know there was a death penalty in the  
3 State of Idaho.

4 Q Yes, there is. You are not alone, it comes as  
5 rather a surprise to most of the jurors.

6 A. Yes, I just -- I don't know whether I would have  
7 the right to say whether somebody should be sentenced to death  
8 or life imprisonment.

9 Q I think this is the thing you need to understand.  
10 Of course, Mrs. Johnson, you are not going to have to make  
11 this choice, directly at least, because the legislature has  
12 made it.

13 A. Right.

14 Q This is something the legislature has done and  
15 you wouldn't be doing it directly. Of course, if you should  
16 find that the State has proved guilt beyond a reasonable doubt  
17 and vote for First Degree Murder you would know that the rest  
18 of the jurors agree, at least, that that would carry an  
19 automatic death penalty. The jury wouldn't be fixing that,  
20 they would simply be deciding guilt or innocence and the  
21 penalty would be the result of what the legislature has done.

22 But, I appreciate that you can't separate the  
23 fact that when you vote for guilt, you know that that's what's  
24 going to follow.

25 A. Yes.

1 Q What we need to know is whether you feel that you  
2 just couldn't, under any circumstances knowing that voting for  
3 a verdict of guilty --

4 A I'm afraid I couldn't.

5 Q You don't think you could?

6 A No, I don't think so.

7 Q So, under any state of the evidence, knowing that,  
8 you don't think you could?

9 A Well, I don't think so.

10 THE COURT: All right.

11 MR. REMAKLUS: We would challenge.

12 THE COURT: Want to resist the challenge?

13 MR. ROBINSON: I'd resist, but no questions, Your Honor.

14 THE COURT: All right. I'll grant the challenge.

15 We appreciate your frankness, Mrs. Johnson. We  
16 will excuse you, then, and appreciate the time you spent here.

17 I'd ask you not to discuss this questioning with  
18 other members of the panel. You may leave through the front  
19 door.

20 THE WITNESS: Okay.

21 THE COURT: The next juror is number 19, Viola Coulter.

22 I'll ask the Clerk to draw another number.  
23  
24  
25

1 VIOLA COULTER,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:

4  
5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Mrs. Coulter, I'm going to ask you a few questions  
8 and then the attorneys will want to ask you some. Everything  
9 we say here and your answers have to be reported by the  
10 Court Reporter, so if you will answer loudly enough for him to  
11 hear you and audibly and not just nod your head.

12 A Okay.

13 Q I want to visit with you a minute about the  
14 procedure we'll follow once we start taking evidence in the  
15 case. When the jury is sworn to try the case and completely  
16 selected and start taking evidence we do what we call sequester  
17 the jury; which means you can't go home at recesses or in the  
18 evening, we house the jurors in a motel. We made arrangements  
19 at the Stardust. They take their meals in restaurants under  
20 the supervision of the Bailiffs.

21 We have -- this will last during the duration of  
22 the trial, of course. Now, we don't know how long this trial  
23 will last right now, but the best estimate we can make is  
24 about three weeks and I think that's, probably, a reasonable  
25 estimate.

1           The first thing we have to know is whether there's  
2 anything in your personal life, your home situation, work  
3 situation if you work, that would make this impossible for you,  
4 or create an extreme hardship. We do know it will be  
5 inconvenient for all jurors so we probably need to talk about  
6 something more serious than just inconvenience. But, if there  
7 is something particularly that creates a real problem for you  
8 we'd like to hear about it at this time.

9           A. Well, it is a hardship at work, but not that much  
10 because they do make arrangements for the different --

11          Q. Where do you work?

12          A. Good Samaritan Center.

13          Q. Would you be faced with being discharged or  
14 anything like that --

15          A. No.

16          Q. -- if you served?

17          A. No.

18          Q. Would the hardship simply be in terms of lost  
19 wages or having a substitute to take your place?

20          A. Having a substitute to take --

21          Q. Could they accomplish that, you think?

22          A. Probably.

23          Q. I take it if you got sick or ill or something they  
24 would do it?

25          A. Right.

1 Q And maybe they can do it under these circumstances.

2 I'd like to move onto something else, then. Under  
3 our law a defendant -- and our system of justice, a defendant  
4 in a criminal action is presumed to be innocent until he's  
5 proved guilty beyond a reasonable doubt by the State and, of  
6 course, the burden is on the State to prove him guilty beyond  
7 a reasonable doubt. I'd give you instructions in more detail  
8 about the meaning of these terms later on in the trial but  
9 the present purposes, it simply means that the defendant does  
10 not have to come forth with any proof of his innocence because  
11 the law gives him that cloak, that presumption of innocence by  
12 virtue of the law.

13 I need to know first whether there's anything that  
14 would prevent you from giving Mr. Creech the full benefits of  
15 this presumption and principle of law right now as he sits  
16 here today.

17 A Well, that's hard to answer, really. I can see  
18 where you are innocent until you are proven guilty but, yet,  
19 if you are guilty you should have --

20 Q Let me break it down this way. Do you have any  
21 quarrel with this principle of law itself that a defendant is  
22 presumed to be innocent until the State proves him guilty  
23 beyond a reasonable doubt?

24 A No.

25 Q Do you disagree with that principle?

1 A. No.

2 Q You understand what this does is fix the burden  
3 of proof -- it would be possible to have a system where you  
4 turned it right around and put the burden on the -- said the  
5 defendant is presumed to be guilty and make him prove his  
6 innocence, but that isn't our system; you understand?

7 A. Right.

8 Q I guess in some countries it is, but not in ours.  
9 So, do you think that is a good system, at least philosophy  
10 protecting the possible innocent person?

11 A. Well, yes, because if he wasn't, we just say he  
12 was -- well, bad that way too.

13 Q Do you -- can you entertain the thought that an  
14 innocent person might be charged with the crime and be innocent?

15 A. It's possible.

16 Q Well, you see, that's the philosophy in our law;  
17 that that is a possibility and our philosophy is to protect  
18 against -- safeguard against convicting an innocent person.

19 A. Um-hmm.

20 Q You are willing to accept that philosophy; are  
21 you?

22 A. Well, it's our duty.

23 Q Do you have some problem with it? You see, I'm  
24 just talking about the general principle right now. We will  
25 talk about this specific case in a few minutes, but do you have

1 any problem with the general principle?

2 A. No, not the principle.

3 Q. All right. Is there anything, something about  
4 this particular case, something you've heard or read in the  
5 papers or on radio or TV or gossip that's caused you to have  
6 some problem about this particular case?

7 A. No, because I'm completely blank on it.

8 Q. You haven't heard a thing; other than what you  
9 heard in court?

10 A. That's right.

11 Q. So, you don't know any purported facts about this  
12 case?

13 A. I'll put it this way: I remember reading it, but  
14 what it was about it was just something to read.

15 Q. You don't have any present memory about it, then?

16 A. No.

17 Q. Well, let me ask you this, then. Have you formed  
18 any opinion right now about Mr. Creech's guilt or innocence;  
19 or are you completely open minded?

20 A. Well, I hope I'm open minded. The waiting, then,  
21 you think about it.

22 Q. Well, you will be instructed that you do have to  
23 give him the benefit of this presumption I've explained to you.  
24 Do you think you can follow that instruction?

25 A. Yes, I think so.

1           Q     Of course, eventually, after the evidence comes  
2     into the case, then you will have to weigh the evidence and  
3     the credibility of witnesses and make a determination whether  
4     you think the State has proved him guilty beyond a reasonable  
5     doubt and then you will be able to decide guilt or innocence.  
6     But, you see, we're talking about right now, without any  
7     evidence, whether you can consider him to be innocent  
8     completely as he sits here. Do you think you can do that?

9           A     As far as I know he is because I haven't any  
10    knowledge that he isn't.

11          Q     All right. Another problem I want to discuss  
12    with you.

13                Under our Idaho law, neither the jury nor the  
14    Judge has any discretion in a First Degree Murder case with  
15    fixing the penalty. The legislature has done that already and  
16    the law provides a mandatory death penalty for First Degree  
17    Murder; that means the jurors won't vote on the penalty if it's  
18    First Degree Murder.

19          A     Just an automatic thing?

20          Q     Just automatic if he's convicted of that. I'm  
21    wondering whether there's any personal feeling you have about  
22    the death penalty, or personal belief, that would prevent you  
23    from considering the -- even considering the question of  
24    guilt or innocence because of this automatic death penalty?

25          A     Well, really, there's only one person that can

1 decide that and that's God.

2 Q All right. Would you be able to weigh the  
3 evidence and the law and vote on a First Degree Murder charge  
4 knowing that if you vote guilty that that penalty would follow?

5 A I don't know. That's something a person would  
6 really have to think about. I really don't know.

7 Q I know it's a difficult thing to answer,  
8 Mrs. Coulter, and probably hit you all of a sudden without  
9 having a chance to have thought about it.

10 A Right.

11 Q I guess you are the only one that can search your  
12 soul and your mind and make a final decision. Do you want to  
13 take a little while to think about it? I'm not going to rush  
14 you, but probably we will have to have you decide whether you  
15 could or not.

16 A I can see where they need the laws to govern  
17 because no man has the right to make the decision.

18 Q See, the way I've told you the legislature has  
19 really made the decision. Directly, at least, you don't have  
20 to, but indirectly you would be by voting for guilty, calling  
21 for this -- you would know in your own mind that this penalty  
22 would follow; even though you are not fixing -- deciding that  
23 should be the penalty.

24 The only way I can put it to you, there's just --  
25 if you felt, analyzing the evidence and the law and the State

1 had proved guilt beyond a reasonable doubt of First Degree  
2 Murder, could you -- would you be prevented from voting for  
3 that verdict because of this death penalty or could you vote  
4 for it?

5 A. Well, if it was clearly stated that he did it,  
6 then I'm afraid it would have to be guilty.

7 Q. But, you think you could make that decision then?

8 A. Yes, I think if it's strong enough evidence.

9 Q. You could do it?

10 A. I could do it.

11 Q. All right.

12 Under our system, Mrs. Coulter, the jury decides  
13 the facts and weighs the credibility and the weight to be  
14 given to the testimony of witnesses. The Judge has to decide  
15 what the law is and instructs the jury on the law.

16 Is there any reason why you couldn't follow my  
17 instructions on the law?

18 A. None that I know of.

19 Q. Any reason you know of that you couldn't be a  
20 completely and fair and impartial juror to both sides in this  
21 case?

22 A. Right now, no.

23 THE COURT: Counsel may inquire.  
24  
25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mrs. Coulter, is Good Samaritan Center a nursing home?

A. Yes.

Q. How long have you worked there, Mrs. Coulter?

A. It opened the first of October in '74.

Q. Had you done work like that before?

A. Yes, for 15 years. It will be 15 years.

Q. Um-hmm. Who operates the Good Samaritan Center?

A. You mean the administrator or --

Q. No, is it a church group that operates it or private business group or do you know?

A. Well, it's affiliated with the Lutheran --

Q. With the Lutheran Church?

A. Right.

Q. Um-hmm. Are you a member of the Lutheran Church?

A. No.

Q. What religion -- what's your religious affiliation?

A. Non-denominational.

Q. Are you active in any church group?

A. No.

Q. Now -- but you worked in a nursing home now 15 years?

A. Right.

1 Q And your direct activity here is Assistant  
2 Activity Director. And now, this would plan activities for  
3 the old folks out there?

4 A Right.

5 Q It's -- that is sort of your life's work, to make  
6 the declining years pleasant for people, this is quite a change  
7 to be confronted with; this mandatory death penalty; isn't it?

8 A Right.

9 Q That really does go against your beliefs; doesn't  
10 it, Mrs. Coulter?

11 A It's very hard to --

12 Q I think it's a very difficult thing also. I think  
13 what we're confronted with is whether or not, if you are  
14 accepted here as a juror and we review the evidence and, then,  
15 you are called upon to make a decision, the appropriate  
16 decision is whether or not the death penalty being inflicted  
17 would keep you from voting guilt; even though you think that  
18 the State had met the burden of proof. Do you think that would  
19 keep you from voting for guilty?

20 A It would be very -- be a very tough decision and  
21 I really, at the moment it's hard to say. But, if there's  
22 strong enough evidence, you can't tell.

23 Q Now, you did not interpret the Judge's questions  
24 about the defendant being presumed to be innocent, as -- and the  
25 Judge's reference to instructions as being that he was going to

1 instruct you to return a verdict of innocent? Did you -- this  
2 gets kind of complicated when you come in and have all of these  
3 questions by different ones of us. We certainly, as the  
4 Prosecutor here, have no quarrel with the legal concept that a  
5 defendant is presumed to be innocent until proven guilty  
6 beyond a reasonable doubt. The question that I am trying to  
7 ask you is that if the State does prove First Degree Murder  
8 beyond a reasonable doubt, will the death penalty keep you from  
9 voting for a guilty conviction?

10 A. No, I don't think so if they can really prove it.

11 Q. Now, do you have any -- you don't have any  
12 children, I see?

13 A. No.

14 Q. And Mr. Coulter works for Hecla?

15 A. Right.

16 Q. How long has he been employed by Hecla?

17 A. Twenty-four years.

18 Q. I see you folks have lived here in this county for  
19 a long time.

20 A. Right.

21 Q. Where did you work before you went over to Good  
22 Samaritan Center?

23 A. For the Shoshone County Nursing Home.

24 Q. Um-hmm. Are there two nursing homes?

25 A. They closed.

1 Q I see. You and your -- do you and your husband  
2 have some hobbies? What do you do in your spare time?

3 A Well, we used to fish and hunt.

4 Q Do you still do that in the summertime when the  
5 weather is good?

6 A Well, we're getting away from it.

7 Q Um-hmm. Do you read?

8 A I read, knit, crochet.

9 Q Do you take the daily papers?

10 A The Kellogg paper.

11 Q Um-hmm. Do you take any magazines in the mail?

12 A Hobby magazines, um-hmm. Better Homes and Gardens.

13 Q Do you and Mr. Coulter watch television?

14 A Yes.

15 Q Do you watch programs like Petrocelli and some of  
16 the other lawyer programs?

17 A Not too much.

18 Q You wouldn't be -- you don't have any preconceived  
19 idea that trying a lawsuit here would be like on the television;  
20 do you? I'm afraid it wouldn't be that exciting, it's a  
21 pretty tedious thing. You don't have any preconceived ideas  
22 of what lawyers should do or act like, do you?

23 A I have no idea.

24 Q You've never been a juror before, have you?

25 A No, I have not.

1 Q Have you ever been a witness in a lawsuit?

2 A No.

3 Q Have any of your family or friends ever had  
4 occasion to be involved in court action?

5 A None that I can remember.

6 Q Do you think that in order for you to return a  
7 verdict of guilty in this case that we would -- that the State  
8 would have to prove guilt to an absolute certainty?

9 A Pretty much.

10 Q Do you still feel, Mrs. Coulter, that you could  
11 view the evidence and not consider the penalty in arriving at  
12 your verdict?

13 A You mean the death penalty?

14 Q Yes.

15 A With all the evidence? I don't know, the more you  
16 talk --

17 Q That death penalty is still there; isn't it?

18 A It's still there.

19 Q It's in your mind right now, isn't it?

20 A Right.

21 Q I think what I'm asking you, could you dismiss the  
22 penalty from your mind and just base your verdict upon the  
23 evidence?

24 A All a person could do would be to try.

25 Q It's a tough question; isn't it?

1 A. It sure is.

2 MR. REMAKLUS: We'll pass the juror for cause, Your  
3 Honor.

4  
5 VOIR DIRE EXAMINATION

6 BY MR. ROBINSON:

7 Q. Mrs. Coulter, do you personally, yourself, believe  
8 in God?

9 A. Yes.

10 Q. Do you believe that Satan exists?

11 A. Yes.

12 MR. ROBINSON: Pass Mrs. Coulter for cause.

13 THE COURT: I'll ask you to step back into the jury  
14 room and wait there with the other jurors here. Don't discuss  
15 the questions with any of the other members of the panel as they  
16 come in.

17 MR. ROBINSON: Your Honor, it's the State's next  
18 challenge.

19 THE COURT: All right, the next juror is number 105,  
20 George Stancik.

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1                               GEORGE STANCIK,  
2     a prospective juror herein, having been first duly sworn, took  
3     the stand and testified as follows:

4  
5                               VOIR DIRE EXAMINATION

6     BY THE COURT:

7               Q     Mr. Stancik, I want to ask you a few questions and  
8     then the attorneys will want to ask you a few. The Court  
9     Reporter has to write down everything you say so if you will  
10    answer loudly enough for him to hear, please.

11               I want to visit with you a minute about the  
12    procedure we'll follow once we get a jury here. When the trial  
13    starts, as far as taking evidence, once we have completed the  
14    selection of the jury, the jury is sworn to try the cause and  
15    start taking evidence the jury won't be able to separate, then,  
16    and go home at night or recesses. We will house you at the  
17    motel, the Stardust, take your meals at restaurants under the  
18    supervision of the Bailiffs. This is what we call sequestering  
19    the jury.

20               The last information, the duration of the trial;  
21    we don't know how long the trial will take. Our best estimate  
22    right now is perhaps three weeks, that's just a guess, or an  
23    estimate, but it's probably a reasonable one.

24               We need to know further whether, under this  
25    procedure, there's anything in your personal life or home

1 situation or work that would make this impossible for you to do,  
2 or create an extreme hardship. We know it will be inconvenient  
3 but we probably have to talk about something more serious than  
4 inconvenience. Is there anything particular in your situation  
5 that you feel --

6 A. Perhaps this is a personal thing, but my wife  
7 works too and we have two girls at home.

8 Q How old are they?

9 A. Thirteen and eleven.

10 Q Now, they both go to school?

11 A. They go to school.

12 Q What's the timing with relation to when they go to  
13 school and when your wife has to go to work?

14 A. We both have the day shift, she has to go to work  
15 at -- she gets -- she has to be at work at six in the morning  
16 so she leaves at quarter after five. I don't have to be to  
17 work until seven, so I leave about six-fifteen.

18 Q And when is she home?

19 A. She is home before --

20 Q The girls get home?

21 A. Because she gets off at two.

22 Q Are the girls responsible so they could still  
23 get themselves ready for school after she left or --

24 A. Well, I guess they could, they are children,  
25 though.

1 Q Do you have any family or relatives that maybe  
2 could check on them or something?

3 A No, we have no --

4 Q Would it solve your problem to know that at least  
5 you could perhaps call home in the morning through the  
6 Bailiffs, at least, and have him check with the children?

7 A I suppose this could be -- this would make it  
8 better.

9 Q You can't discuss the case and you would be under  
10 an oath not to let anyone discuss the case with you and the  
11 Bailiffs will too, but that doesn't preclude you from having  
12 communications about personal matters and family matters and  
13 having messages come in. It will all have to go through the  
14 Bailiffs to make sure nothing is -- no communication is  
15 involved with this case, you see. But, it would be possible  
16 to have you have some Bailiff make a phone call for you, check  
17 with the children.

18 Do you feel -- we don't want to put your children  
19 in jeopardy or anything if, probably, you'll just know them  
20 better than we do and maybe have to make a decision. We'd like  
21 to keep you as a juror if you think the situation can be  
22 handled by your wife and children. If you don't think it -- if  
23 you think it would put your children in some kind of risk or  
24 jeopardy, why --

25 A Well, it does to a point, but it's my wife that I

1 worry about. She's irrational, should I use the word, and she's  
2 having problems.

3 Q Is she having problems?

4 A She had to have a few operations and she's going  
5 into the change.

6 Q You, perhaps, have a problem there handling the  
7 children?

8 A I believe that she would have a problem.

9 THE COURT: All right.

10 MR. ROBINSON: I'd stipulate, Your Honor.

11 MR. REMAKLUS: Yes, he may be excused.

12 THE COURT: All right, we appreciate the problem,  
13 then, Mr. Stancik, and we will excuse you under the  
14 circumstances.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you for the time you've spent here.

17 Would you bring all the members of the panel into  
18 the courtroom here that we have right here in this building.  
19 Have them go back and sit behind the rail.

20 (Whereupon the prospective jurors that had been  
21 questioned re-entered the courtroom.)

22 THE COURT: We want to express appreciation to you for  
23 your patience. We have to report that we still don't -- haven't  
24 completed the selection of the jury, so we're going to have to  
25 take our evening recess and go again tomorrow morning. I simply

1 want to remind you of the admonition I gave you at the beginning  
2 of the trial and ask you to again please abide by it during this  
3 evening recess. Don't discuss the case among yourselves or  
4 with any other person or let anyone discuss the case with you  
5 and please don't watch any news broadcasts. Several of you  
6 came in today, you did turn off the radio or TV when it came on  
7 and we appreciate that and ask you to do the same thing again  
8 tonight and have your family clip out any of the stories if you  
9 want to keep them so you can read them but please don't read  
10 them yourself.

11 So, if you will please abide by that admonition  
12 we'll take our recess until 9:30 tomorrow morning and ask you  
13 all that are here now to report back to this building in the  
14 morning.

15 (Recess taken.)

16 (Following proceedings occurred before the  
17 remaining jury panel in the Shoshone County Courthouse.)

18 THE COURT: I wish I could report that we have a jury  
19 selected but we don't. We're still going. I want to keep you  
20 advised that -- progress, they've got 13 pre-emptory challenges  
21 left, so it looks like we probably will finish it tomorrow, at  
22 least. So, we will have to ask you, though, to abide by the  
23 admonition I gave you the first day again, don't discuss the  
24 case among yourselves, don't let anyone discuss the case with  
25 you and please don't even watch any news broadcasts or listen to

1 any. I've been impressed by jurors we've examined today.  
2 Several of them said they turned the news off when they saw it  
3 coming on and their family clipped the stories out of the paper  
4 for them, to save for them and didn't let them read them.

5 So, we appreciate that and I hope you'll all be  
6 able to do that again this evening and avoid any contact with  
7 news reports.

8 We'll be in recess until 9:30 tomorrow morning and  
9 if you will all report again to this courtroom in the morning.

10 Thank you for your patience.

11 (Evening recess taken.)  
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